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THE WORKER
AND THE STATE

By The Same Author

BANKING AND NEGOTIABLE INSTRUMENTS

INTRODUCTION TO COMMERCIAL LAW

INDUSTRIAL LAW

THE WORKER AND THE STATE

BY

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THIS BOOK IS PRODUCED IN COMPLETE
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PREFACE

TO THE THIRD EDITION

The second edition of this book was published in 1936. In the next year a long overdue extension and simplification of the law as to factories and similar workplaces was made by the passing of the Factories Act, 1937. Legislation as to hours of employment was continued in 1938 by the enactment of the Young Persons (Employment) Act, 1938. In the same year the Road Haulage Wages Act, 1938, besides setting up a Wages Board for that industry, made a new departure in giving the Industrial Court jurisdiction to deal with individual applications. The years of the World War were not conducive to general legislation, but in 1943 the Catering Wages Act made elaborate provision for dealing with the special complications of the Catering Industry to which the application of the ordinary Trade Board machinery seemed impracticable. Then early in 1945 the Wages Councils Act turned the forty or so existing Trade Boards into the first Wages Councils with more powers and greater authority. The end of the war period, just as happened in the first World War, was fruitful of ideas for Reconstruction, but with this difference that after the second war these ideas were embodied in legislation. The Beveridge scheme for social security was adopted in principle by all parties, and is now represented on the Statute Book by the Family Allowances Act, 1945, the National Insurance Act, 1946, the National Insurance (Industrial Injuries) Act, 1946, and the National Health Service Act, 1946. Of these four Acts only the earliest is in actual operation. So far "appointed days" for the coming into force of the three other Acts have not been announced, though it is generally understood that all the Acts will be functioning not later than the end of the first half of 1948. As is usually the case nowadays many administrative details have been left to be settled by Regulations so that the Acts by themselves do not give a complete picture of what will happen when they come into operation. Fortunately in this instance this is not so important as might be thought. The National Insurance Act, 1946, which consolidates and extends the present provisions of unemployment and health insurance is bound to preserve as much as possible of the system of state administration which has prevailed in unemployment insurance. Even in the case of the

National Insurance (Industrial Injuries) Act, 1946, which does away with Workmen's Compensation and substitutes for it a state insurance scheme, it is surprising to what a large extent the old legislation has been drawn upon in drafting the new Act. There are also clear indications that the administration of the Act will be based largely on previous experience. It has therefore been decided to issue this book without waiting for the fixing of appointed days or the issue of Regulations to be made under the Acts. It seems hardly necessary to add that in view of all this important legislation a considerable part of the book has been rewritten, and the whole of it revised. I am greatly indebted to Professor Hugh Goitein, who is my successor at the University of Birmingham, for his valuable help in reading through the proofs of this edition and making many valuable suggestions.

FRANK TILLYARD.

30th April, 1947.

PREFACE

TO THE SECOND EDITION

The whole of this book has been revised, and the subjects of National Insurances and Trade Unions, which were purposely omitted from the first edition, have been dealt with in two new Sections. As in the first edition, the treatment is historical and critical, as well as expository. It is hoped that this method of treatment will prove of special value in the study of such difficult subjects as legislation in regard to trade unions and unemployment insurance. As regards the latter the author had the great privilege of serving on the Morris Committee. To make room for details as to recent developments such as the Workmen's Compensation Act, 1923, Contributory Pensions, the Shops Act, 1934, and new Regulations and Welfare Orders made under existing Factory legislation, some of the discussions of Reports of Departmental Committees which appeared in the first edition have been cut out. In a subject in which so much legislation is delegated and only to be found in Statutory Rules and Orders, omissions and inaccuracies are sure to be found and readers will be doing a service in pointing them out.

FRANK TILLYARD.

June, 1935.

PREFACE

TO THE FIRST EDITION

This book was written two or three years ago for inclusion in a series which came to an untimely halt. Its original scope was limited by the general plan of that series. It has been revised and brought up to date, but no material alterations have been made in the treatment of its subject.

The book deals, broadly speaking, with the interference by the State in the relationship of employer and employed for the purpose of securing the health, safety, and general well-being of the latter class. Besides treating of health and safety on a wide basis it comprises the law as to the fixing and payment of wages, as to hours of labour, and as to compensation for accidents. The subjects of State Insurances and Trade Union law are purposely omitted. The treatment is historical and critical, as well as expository, and Reports of Departmental Committees on the working of the Truck Acts and the Workmen's Compensation Act, Annual Reports of the Chief Inspector of Factories, and various local Reports have been utilized. The Report of the Cave Committee on the Trade Boards Acts only appeared as the book was passing through the press, but its Summary of Recommendations will be found in the Appendix.

It is hoped that the grouping of a large number of Acts of Parliament and Statutory Orders in four main sections on Wages, Hours of Labour, Safety, and Health will do something to avert the very real danger in a subject of this kind of not being able to see the wood for the trees. The book is not intended as a detailed work of reference on the lines of my *Industrial Law*, but an effort has been made to give a full and accurate account of existing law in a readable form. Omissions and inaccuracies are sure to be found, and readers and critics will be doing a service in pointing them out.

FRANK TILLYARD.

THE UNIVERSITY,
EDGBASTON, BIRMINGHAM.

August, 1922.

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SECTION I

INTRODUCTORY

CHAPTER I

THE GENERAL RELATIONSHIP OF EMPLOYER AND WORKMAN APART FROM LEGISLATION

CHAPTER II

EXPERIMENT IN INDUSTRIAL LEGISLATION

SECTION I

GENERAL INTRODUCTION

CHAPTER I

THE GENERAL RELATIONSHIP OF EMPLOYER AND WORKMAN APART FROM LEGISLATION

The main subject of this book will be the explanation and discussion of the lines on which the State by express parliamentary enactment has intervened in the conduct of industry and imposed statutory obligations for the most part on the employer, but also to a subsidiary degree on the workman. This action by Parliament is commonly called industrial legislation. But in England law is much older than legislation, and the relationship between employer and workman is even to-day in fundamentals a matter of law as distinct from legislation, though, of course, the term "industrial law" includes all current industrial legislation. A preliminary warning must be given as soon as such a term as industrial law is introduced. However convenient such terms as industrial law, commercial law and the like may be, no lawyer exercises them without the same sort of feeling that a sensitive historian has for the terms "modern" and "ancient" history—namely the sense that law cannot be cut up into small pieces and labelled. The law as to employer and workman is for the most part the general law of contracts as applied to this particular relationship. Apart from legislation, employer and workman are just two persons who have made a bargain which the law will enforce. So far as they have stated expressly the terms of the bargain the law will give effect to its terms on the same principles and to the same extent as in the case of other bargains.

It is true that employer and workman seldom, if ever provide, expressly for all the eventualities of actual life, and that many terms of a contract of service are known as implied terms, and implied terms in a contract of service will necessarily differ from the implied terms in another kind of contract, such as a contract of sale. The respective duties which under the contract of service

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are imposed on the two parties to it are almost always matters of implication, and from time to time are settled by decisions of the Courts given in disputed cases, so that a body of precedents or case law has been gradually built up as regards contracts of service, and these decisions which are special to contracts of service can be separated from decisions on other kinds of contract, and can conveniently be given a distinct name, but this does not impair the general statement that the law of employer and workman is part of the general law of contracts.

The contract of service may be made verbally or in writing or partly in one way or partly in the other way. We may even say that verbal expression is not necessary for the whole of the contract, and that many terms may be left to be inferred from the conduct of the parties. For instance, a foreman who is in want of an extra labourer, goes to the gate of the works and finds there a group of men waiting for a possible job. He picks out the most likely-looking man, and tells him that he can have a job. The man hands in his cards and the foreman sets him to work. There has been an offer of work and an acceptance, and in law there is a contract of service. The man will probably ask his mates what the hours and wages are, or he will wait till pay day and find out by experience. If he is dissatisfied the workman will leave, but otherwise he will stay on, and it will be on the terms which have actually been enjoyed by him. Let us suppose that a month later the workman is paid five shillings less than his due wages, and has to take his employer to Court to obtain his wages. The Court will not say that the wages have not been fixed, and that the employer may pay anything he likes, just because nothing was said about wages when the contract was first made, or because there has been no verbal expression as to the wage agreement since the contract was made. The conduct of the parties will have fixed the rate of wages, and those wages must be paid until a fresh agreement has been made between the employer and workman. In other cases, the workman, when engaged, will ask what his wages are going to be, and the foreman replies that he will pay him what he proves to be worth. The man is then on trial, and after a few days the foreman tells him his rate, or pays him what he thinks he is worth, and if the workman accepts it, then the rate of wages is fixed, and is binding on both sides until a fresh agreement is made.

At works where the engagement of new workmen is made through a works labour bureau, or in any other systematic manner, a card record will probably be kept by the employer on which will be entered the date of engagement, the class of work to be performed,

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and the wages to be paid. If the engagement card is countersigned by the workman there is a written contract of service on those terms and, even if it is not so signed, the record card enables the employer to give such clear evidence in any dispute that the workman's evidence would have to be very strong to upset it.

There is one exception to this general rule, and it is that where the contract is for a period of service which exceeds a year, or is for a year's service from a future date, then under the terms of an old statute (Statute of Frauds, date 1677) the terms of the contract can only be proved in Court by evidence in writing signed by the party to the contract against whom the action is being brought. In practice this means that the contract must either have been made in writing, or its terms must subsequently have been reduced to writing and substantiated by the signature of the party to be charged therewith. A written agreement usually needs a sixpenny stamp, but there is an exception where the agreement is for the hire of a manual workman.

In accordance with the English theory of liberty, which does not expressly confer on a man the right to do certain things, but gives him a right to do anything he pleases, subject to his not injuring the community, or interfering with the rights of his fellow men, an employer and workman may agree to any terms they please so long as this private contract (a) does not amount to a private repeal of the terms of an Act of Parliament which is intended to be binding on all persons; or (b) is not "against public policy". The technical term to express the right of individuals to make a bargain in contravention of an Act of Parliament is known as the right of "contracting out". It may be said generally that statutes which impose a penalty on an employer for a definite act or omission, such as, for instance, keeping a young person at work in a factory for longer than the prescribed period, or leaving a dangerous machine unfenced, cannot be evaded by any agreement between the employer and the workman. Thus, under the Trade Boards Act, 1918, a penalty was payable by an employer who paid less than the minimum wage, and no contracting out was allowed, though under the original Act of 1909 contracting out was expressly allowed by written agreement during the period of limited operation. The Wages (Temporary) Regulation Act, 1918, which also imposed a penalty on an employer who failed to pay a prescribed rate under the Act, made the position clear by express enactment in the following words: "An Agreement for the payment of wages in contravention of this section or for abstaining to exercise any right of enforcing payment of wages in accordance with this section shall

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be void." The Wages Councils Act, 1945, which supersedes the Trade Boards Acts, makes the position of an individual contract between the employer and the workman which contravenes the Act quite clear. Under section 11 (1) of that Act if a contract between a worker to whom a wages regulation order applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, it shall have effect as if for that less remuneration there were substituted the statutory minimum remuneration. Then under section 11 (2) the penalty for paying less than the statutory minimum remuneration is imposed. The inelasticity which this salutary rule might in certain circumstances create can easily be cured by other devices such as "permits" for the infirm, introduced by the Trade Boards Act, 1909, and exemptions and relaxations from certain sections of the Factory Act which can be allowed by special order. Where, however, the Statute is not a penal statute but merely makes a statutory alteration in the terms of the contract between the employer and workman, it has been held that, in the absence of direction contained in the Act, an employer and workman are free to make a bargain that the Act shall not apply as between them. For instance under the Common Law a servant is held to take the risk of injury by the negligence of a fellow servant. The Employers' Liability Act, 1880, enacted that a servant was in certain cases to have the same right of compensation against the employer as if the servant had not been in the service of the employer; that is to say, he was to be held in those cases not to have taken the risk of injury by the negligence of a fellow servant. The House of Lords decided that in the absence of an express direction to the contrary an employer and workman could contract themselves out of that Act and regulate their position as to accidents by the Common Law and not under the terms of the Statute. But the prevailing tendency is to enact legislation on the lines of the Wages Councils Act rather than on those of the Employers Liability Act.

A contract which is against "public policy" presents more difficulty. A contract of service under which the servant bound himself to do something criminal in his master's service would naturally be against public policy. So also would a contract that the servant should do something which at the time of making the contract might have been legal but which subsequently becomes illegal. A might hire B to go and work for him in Germany. On war being declared between Great Britain and Germany B's departure for Germany would become illegal and the contract void. The most interesting rule of "public policy" is that which forbids

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contracts in restraint of trade. This is a very old general rule of the Common Law, but under certain circumstances it comes into conflict with the very reasonable desire of an employer to protect himself from the competition of his servant after the servant has left his employment, and in the interests of the community an exception has been grafted upon the rule. The presumption is still against the validity of the restraint imposed upon the servant's liberty to do as he pleases after he leaves his master's service, but if the master can prove that the restraint on his servant's freedom which he has bargained for with his servant is no more than is reasonably necessary to protect the master's business, then the bargain as to the restraint will be given effect to by a Court of Law. What is a reasonable restriction will vary from business to business, and quite a small geographical area within which the restriction is to hold good may be allowed for instance in the case of a milk business, while in the case of a business which manufactured machine-guns a world-wide restraint has been held to be reasonable.

The substantial terms of a contract of service are the rate of wages, the hours of labour, and the length of service, or if the service is for an indefinite period, then the length of the notice required to put an end to the service.

On all these points the employer and workman can, as we have already seen, in general make any individual bargain they please, but for a long time there has been under the Factory Acts a statutory restriction on hours of labour for certain classes, and much more recently, under various Acts, a restriction in the hours of adult male labour, and these restrictions must be considered in a separate chapter. Also, since the Trade Boards Act, 1909, there have been various restrictions imposing a minimum wage on certain industries, and these again must be considered separately. On the question of length of notice there has been practically no peace-time legislation, and employers and workmen as a rule do not expressly bargain as to the length of notice, so that the Courts have had to lay down definite rules in certain classes of cases. It is proposed to examine in some little detail the Common Law rules as to length of notice, but it must be clearly borne in mind that these rules only apply in default of agreement to the contrary. For instance, some factory employers give and demand under their agreements with their workpeople a fortnight's notice, which is unusually long, while others put up notices saying that no notice will be given or required.

Where nothing is expressly arranged between the parties to a

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contract of service the old Common Law rule was that the hiring was for a year and could only be terminated at the end of the year. The advantage of this rule in husbandry is obvious, as the master's plans might be seriously upset if his servants could leave him just before the harvest. Hiring fairs were commonly held in the autumn, earnest money was given to bind the bargain, and after its acceptance the servant was bound to his master for a year. From husbandry this custom spread to industry, and there is evidence that yearly hirings from Martinmas to Martinmas in the pottery trade were customary down to comparatively recent times. The terms under which domestic servants are still engaged show that originally their hiring was also by the year, as their wages are often yearly wages. This industry is a good example of how in practice the system of yearly hirings began to break down. At some time or other a custom grew up under which a domestic servant came to give and take a calendar month's notice. If one may hazard a guess, the monthly notice came in with the payment of monthly wages. The Common Law has a doctrine that a party to a contract cannot perform part of it and demand a *pro rata* payment without the consent of the other party. There is a comparatively modern case of a ship's mate who was hired for a voyage at a lump sum for the voyage. In the middle of the voyage he threw up his position and made himself generally useful for the rest of the voyage. It was held that he had no claim to the whole sum fixed, as it had not been earned, nor to a proportionate part of it, as the contract was what the lawyers call an indivisible contract, nor to compensation for services rendered after resignation as they were voluntarily rendered. Probably the yearly hiring, as it involved no current expense for food and lodging, was originally treated as an indivisible contract, and the wages were paid in a lump sum at the end of the year. As opportunities of spending money became more frequent the demand for payments on account would develop, and monthly payments and monthly notices would become customary. While industry borrowed in certain cases from these yearly hirings, in other cases, where the servant did not live with his master, something much simpler was possible, and the term journeyman suggests a hiring by the day. Where work was given out to be done by the piece, it might be doubtful whether there was a relationship of master and servant, or of "independent contractor". Traces of this distinction occur in the definition of workman which was originally adopted in the Employers and Workmen Act, 1875, and which has since been incorporated in other industrial legislation. The important part of that definition is the inclusion within it of a manual worker

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who "has entered into or works under a contract with an employer, *whether the contract be a contract of service, or a contract personally to execute any work or labour*". The journeyman, and the piece worker who contracts to do work personally but is not in service with the employer, both suggest a state of industry in which the worker is only partially dependent on the employer of the moment, and is under no necessity to take a whole-time engagement with one employer. The introduction of the Factory system brought into prominence the class of worker who worked for one employer and did nothing else, and who did not live with his master. In this case yearly payments were out of the question, and though a great deal can be said for monthly payments from a social and moral point of view, it is quite evident that a weekly wage and a weekly payment were convenient both for employers and workpeople, and they are now practically universal. Even where the worker is a piece worker, and the unit of work takes more than a week to perform, a weekly payment on account is customary. From a reservation of weekly wages the law will presume an indefinite hiring which can be terminated by a week's notice on either side. In certain trades, such as the building trade, a workman may be engaged for a particular piece of work, the duration of which is not indefinite. In such trades there is not a reservation of weekly wages but of hourly wages, and the notice to leave is assessed in hours, and at the present time the rule in the building trade is two hours' notice on either side, terminating at the end of a day. Whatever may have been the custom in the early days of factories, a weekly wage for manual labour is now usually a wage paid in return for a definite number of hours' work, and in one sense there is little distinction between a weekly wage and an hourly wage, as the one may be connected with the other by the simple process of dividing or multiplying by the number of hours normally worked in the week. Nevertheless, the idea of a weekly wage is useful from the social point of view, and when the hours in the engineering trade were reduced by agreement from 53 hours per week to 47 hours per week, the men's Society stipulated that there should be no alteration in the weekly wage, so that the same sum was paid for 47 hours' work as had previously been paid for 53 hours' work. The engineers' rate is sometimes expressed as so much per hour, but this experience shows that it was in essence a real weekly wage.¹ The A.E.U. are fully alive to the advantage of a fixed weekly wage, and if any of their members work for an employer whose standard

¹ Under the Trade Boards Act, hourly wages were fixed. Under the Wages Councils Act, 1945, weekly wages may be fixed.

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week is less than the normal, say 44 hours, they insist on the same payment for 44 hours as for 47 hours. This principle does not apply when men in an emergency are put on short time. It is rather curious that a society which sets such store by the weekly aspect of its wage should prefer the system of "no notice on either side", in place of the customary week's notice. The explanation apparently is that if a man hears of a particularly good opening he likes to be able to secure it at once, and feels that if he has to work a week's notice the job may not be kept open for him.

The position of a piece worker varies a good deal according to circumstances. If he is a home worker he seems to be in the position of an independent contractor and each giving out of work is a separate contract, and there is no obligation on either side to enter into future contracts. It is obvious that the question of notice does not arise. A home worker often takes out work from more than one firm, and in such a case any system of notice would be impracticable. The worker has, of course, bound himself to finish the work actually taken out. Where the piece of work is done on the employer's premises, a different set of considerations come into play. Occasionally the work is done under conditions which are substantially the same as when work is done at home, that is to say, the piece worker looks in to see if there is work to do, does it at his own pace, and when he has done it is free to ask for another job or not as he may please; but instances of this are now very rare. Where these very casual and haphazard conditions obtain, it would presumably be held that each giving out of work constituted a separate contract, and neither of the parties would be bound to give out or accept work in the future. As a rule an employer's standing charges are nowadays so heavy, and operations are so linked up, that the regularity of attendance of piece workers is just as essential as that of time workers, and they are "clocked in" like time workers and expected to be as regular in attendance as time workers, and the piece workers expect to be provided with a full day's work on every working day, and put forward claims for "waiting time" if continuous work is not forthcoming. Under these circumstances their contracts of service are presumably as continuous as those of time workers, and in matters of notice they stand on the same footing as time workers. Piece work is then used as a system of remuneration which acts as a stimulus to production, and working hours, overtime rates, and length of notice are the same for piece workers as for time workers.

It is quite clear from this historical treatment that notice of some length or other is an implied term of the contract of service,

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and that, if the parties wish the rule to be "no notice on either side", they must make an agreement to that effect.

If the contract of service lasts for any length of time, it is quite likely that its terms or some of its terms will be varied. The principle to be applied here is quite simple. All contracts are arrived at by agreement, and can be varied by agreement and by agreement alone. But just as we have seen that some of the terms of the original agreement may have been settled by the conduct of the parties, so variations may be established by conduct. Suppose, for instance, an employer puts up a notice on a Friday, which is his pay day, that beginning from the following Saturday week his regular working week will be changed from a 44-hour week to a 47-hour week, then all workpeople who with knowledge of the notice present themselves for work on that Saturday will be taken to be coming to work on the terms of the notice, and to have agreed to the proposed variation. On the other hand, the employer may have preferred to call his workpeople together, and after explaining his reasons, get their express consent to the variation. Theoretically a fresh contract is being made, and the variation cannot be made to take effect, except by express consent, within the period required to put an end to the existing contracts. Thus where a week's notice on either side is required, a notice put up on a Friday to take effect on the following Monday would not be effective to alter the workers' rights within a week of the Friday unless the workers, for fear of dismissal, waived their strict rights. The workers' rights to propose variations are in theory just the same as the employers' rights. If the workers want higher wages, their correct procedure from a legal point of view is to "put in their notices" and couple this with the expression of a willingness to go on working after their notices have expired, if the rise of wages is conceded. Here again it is open to the employer to waive his rights and pay the higher wages at once. The question of waiver of rights is quite simple to write about, but often presents considerable difficulties in a Court of Law. This will be referred to again when the question of "suspension from work" is discussed. One further warning should be heeded. As we shall see later, questions of management are decided by the employer, and by the employer alone, unless he has voluntarily delegated such questions to a works committee or similar body. Variations in matters of management can therefore legally be made by the employer without the consent of his workpeople and without notice of any specified length, though, as workpeople are extraordinarily conservative and sensitive on such matters, prudence may suggest another course.

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Besides the terms of the contract as to wages, hours, and duration which may be settled by express agreement, or conduct, or even the custom of the trade, there are other matters which can be called "duties" or "implied terms of the contract", as they are implications arising from the relationship of master and servant. It will be best to begin with certain correlative duties of the employer and the workman. The workman must be ready to work and to continue at work until the contract is at an end, while the employer is under a similar duty to find work for the workman and to continue the employment until lawfully put an end to. Where the servant is appointed to a specific position he is entitled to be employed in that position. It is not enough for the employer merely to provide work for him.¹ The workman's breach of duty may take at least three forms. There may be an absolute refusal to work, which amounts to putting an end to his contract of service or to leaving without notice. The employer in those circumstances is entitled to sue his workman for damages, and if the obligation was to give a week's notice, the damages would be a week's wages. In many instances workmen give up their work without notice, but the employer takes no proceedings for breach of contract and simply fills the vacancy, and this tends to obscure the true legal position. A second class of case occurs where the workman is absent from work through illness or other sufficient reason. Here there are two variations. If the workman does not tell the employer why he is absent then he has failed in his duty and, for all the employer knows, the failure is a wilful failure, and the employer can in some circumstances elect to treat the unexplained absence as a reason for dismissal without notice, and can fill the vacancy. Or possibly the workman might under these circumstances be precluded by his silence from saying that he had not left. If the workman notifies the reason, then the contract of service is not terminated by temporary incapacity to work arising from illness or injury or other sufficient reason, and there is merely a suspension of the contract, and the employer must allow the workman to resume his work when he is able to do so. In the meantime the workman may be entitled to wages, it depends on the circumstances.² The fact that he is receiving sickness benefit under National Health Insurance is not itself a bar to a claim for wages.³ It is clear that when an employer is bound to treat absence from work as a mere suspension of the relationship, he can put an end to the relationship altogether

¹ *Collier v. Sunday Referee*, 1946, 2 K.B. 647.

² *O'Grady v. Saper*, 1940, 2 K.B. 469 (C.A.).

³ *Harrison v. Bell*, 1939, 2 K.B. 187 (C.A.).

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by giving notice of the proper length. The third class of case occurs where the workman comes late or leaves early, and, though generally ready to work, does not present himself for work for the full working hours of the week. Here the question is largely one of degree. It is, of course, always open to the employer to give a week's notice to a workman for any reason, good or bad, but the point now being considered is under what circumstances irregularity of attendance is a reason for dismissal without notice, or for proceedings for damages for breach of contract. It is manifest that irregularity in a stoker or a charge hand is more serious than in an ordinary workman, and that irregularity after warning is more serious than before warning. Deliberate absence for the workman's own pleasure, as for instance, the taking of an afternoon to see a football match, would be such a serious breach of contract as would give the employer the right to determine the contract of service at once. No hard and fast rule can be laid down, and many of the cases really come under another heading, namely the workman's duty to submit to the necessary discipline of the employer's business. It may be as well to mention here a general principle of the law of contracts. Every breach of contract is theoretically a ground for a claim for damages, though very often the game is not worth the candle, or to use legal phraseology, the cost of the proceedings exceeds the damages likely to be obtained. But only such breaches of contract as go to the essence of the contract are grounds for putting an end to the contract. It is not enough for an employer who wishes to get rid of his workman without notice to be able to prove that the workman has broken his contract, he must go farther and be able to prove that the workman's breach of contract is in respect of something that is fundamental to the relationship.

The duty of the employer to find work for his workmen is clear in theory, and a failure on the employer's part is not merely a breach of contract for which damages can be obtained, but is of the essence of the contract from the workman's point of view, so that he can elect to treat the employer's failure as a reason for immediately putting an end to the contract of service. The carrying on of a large works may or may not depend on the presence of a particular workman, but the failure of an employer to find work for a particular workman is a denial to that workman of his only means of living. Under the Munitions Acts,¹ which imposed the system of leaving certificates, a provision was inserted that a workman who had no opportunity of earning wages for a period of more than two days should be entitled to a leaving certificate.

¹ Operative during the 1914-1918 war.

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A question arose in one case as to whether the rule applied when more than two days were missed owing to bad weather. Mr. Justice Atkin, in dealing with an appeal on the point and the question of hardship on the employer, said: "It is to be remembered that, apart from the question of leaving certificates the masters would be faced with exactly the same problem; because, if workmen chose to leave because they could not get wages, apart from the Munitions Act, there was nothing to prevent their doing so." During the second world war under the Essential Work Order so long as a man was available for work and willing to comply with the conditions of the Order he was entitled to the guaranteed wage.

In practice difficult questions arise because employers who find themselves suddenly unable to find work for all their workmen often propose "suspension from work" as an alternative to actual dismissal, and workmen often waive their strict rights and accept "suspension". Suspension is ordinarily a breach of contract which gives the workman the right, if he so pleases, to treat the contract as at an end, but it is not tantamount to a dismissal. On the contrary it is often used as a disciplinary measure, and can be so used without infringing the law as to Truck.¹ On the other hand, the workman may, if he so pleases, refuse to treat the contract as having been determined; he may elect to go on with the contract, and if he does so elect, the contract continues with all its rights and liabilities.

But occasionally "suspension" is only a euphemism for dismissal, and the foreman or employer actually suspends the workman for an indefinite period without any real intention of reinstating him. On sufficient evidence it is always open to the Court to find as a fact that the workman was dismissed without notice, although the terms used may on the surface suggest suspension. Suspension, if definitely accepted by the workman, is a waiver by him for the time being of his right either to have work at which he can earn wages, or to have wages without work. It is, perhaps, well to add that where "no notice on either side" is a term of the contract, the employer can at any moment cease to provide work, and the workmen can at any moment cease to work, the contract being determinable by either side at will, and these interesting questions are irrelevant.

The next duty of the workman to be dealt with is his duty to be reasonably competent and fit for his work and position. There is a duty on the employer which is practically correlative to this—namely the duty of the employer to be reasonably competent as

¹ *Bird v. British Celanese, Ltd.*, 1945, K.B. 336 (C.A.).

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an employer in the industry or trade he has chosen. This duty of the employer is in practice not generally recognized until some accident has occurred to the workman through the incompetence or neglect of the employer, and it is better to discuss it in the chapter on an employer's liability for accidents. The workman's duty may be expressed in other words. He does not guarantee that he possesses the degree of competence which the employer is looking for, but he must not represent himself to be a workman of a particular class when he is not in fact a workman of that class. A classic instance is the case of a man who undertook to act as scene painter. He had no qualifications for such a position, and it was held that he could not complain of instant dismissal. So again, if a man takes a place as a millwright, but has had no experience of machinery, the employer may dismiss him without notice. In such cases the employer would very likely have a right to repudiate the contract on the ground of fraudulent representation on the part of the workman.

As a rule an employer is not concerned with a workman's behaviour out of working hours. A man may get drunk every Saturday night, but if he loses no time on Monday morning, and is a good workman while at work, there is no breach of duty on the workman's part which justifies the employer in dismissing him without notice for misconduct, though, of course, if he does not care for a workman of that type he can give him notice. But there are certain failings which may unfit a workman for his position. A man may be convicted for dishonesty, but not in his employer's service. He may be in a position of some trust. Is an employer bound to pay such a dishonest workman wages in lieu of notice if he feels it is no longer safe to employ him? Apparently he is not so bound.

Another of these general duties of the workman is to submit to the necessary discipline of his master's business. At the present time, discipline and the making of rules by which it is maintained are a function of management vested in the employer. Before long it is possible that this function will be transferred to a works committee on which workmen will be represented, and may even be in a majority. But this will make no difference in principle, and the workman must still submit to the discipline of the business, whatever its origin and whoever is responsible for its administration. A house divided against itself cannot stand, and a workman who deliberately, on a point of discipline, sets up his will, either against his master's will or the collective will of a works committee, renders himself liable in law to dismissal without notice.

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Finally, the workman must observe good faith towards his employer. This principle forbids such matters as the workman working for himself in his employer's time, taking secret discounts or commissions, using his knowledge of his employer's business for his own purposes, or working for his employer's trade competitor in his spare time.¹ Conduct of this type is a serious breach of the contract of service, and may even in some cases bring the workman within the Criminal Law.

¹ *Hivac, Ltd. v. Park Royal Scientific Instruments, Ltd.*, 1946, Ch. 169 (C.A.).

CHAPTER II

EXPERIMENT IN INDUSTRIAL LEGISLATION

The activity of the State in the interests of the worker has been most marked during the last eighty years or so, and the pace at which industrial legislation has been produced has been much accelerated since the year 1906.

Quite recently attempts at reconstruction have given a fresh impetus to this legislation. As everyone knows, this is in striking contrast to what was happening in the first twenty years of the nineteenth century. Parliament was then engaged in sweeping away the Tudor Code as to wages and employment, and clearing the way for the fullest application of the prevalent doctrine of *laissez faire*. This is not the place for historical disquisitions, but convenient summaries will be found by the reader in Professor Sir William Ashley's *Economic Organization of England*, pp. 161-172, and in the second chapter of the author's *Industrial Law*. The late Mr. Stanley Jevons, writing in the year 1882 on a subject with almost the same title as this book, namely the State in relation to Labour, devoted about one-fifth of his book to a discussion of the Principles of Industrial Legislation, and arrived at the conclusion, which was at that period an exceedingly bold one, that there were no such principles. "As, then, in philosophy the first step is to begin by doubting everything, so in social philosophy, or rather in practical legislation, the first step is to throw aside all supposed absolute rights or inflexible principles. The fact is that legislation is not a science at all; it is no more a science than the making of a ship or a steam engine, or an electrical machine is a science. It is a matter of practical work, creating human institutions." Further, he insists on the obvious truth that "legislation must proceed upon the ground of experience. Legislation must be Baconian". He also contends that it is possible for the legislator to resort to direct experiment. Since Jevons wrote these words some striking instances of experimentation are to be met with, and this Chapter is devoted to the subject of Experiment as a Factor in Industrial Legislation. This might involve an historical investigation of portentous length, but it will be sufficient to choose outstanding examples from the Truck Acts, the Factory Acts, the Mines Acts, the Workmen's Compensation Acts, and Minimum

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Wage Legislation. The various points that will be brought out are as follows: the superiority in a general Act of the method of definition over the method of enumeration; the advantages of a central inspectorate; the limits of such an inspectorate, and the new device of internal inspection or self inspection; the danger of legislation on arbitrary lines or not preceded by experiment; the position of mining as a pioneer industry; the tentative introduction of entirely new principles in the spheres of (a) compensation for accidents, and (b) the fixing of wages, followed by much wider applications of these principles; and the devolution by Parliament of the working out of accepted principles to a Government department.

The first illustrations will be drawn from the Truck Acts. One especially interesting point about the Truck Acts is that they constitute the one exception to the general rule that current industrial legislation is very modern. It is true that the earliest Truck Act now in force is the Truck Act, 1831, but there has been continuous legislation to secure the payment of wages in current coin of the realm and not in goods or other allowances from the year 1464 down to the present time. How the Truck Acts were maintained during the period when the doctrine of *laissez faire* was most powerful is hard to say, except that our legislation is never logical, and that it never seems to have occurred to anyone to question the wisdom from the *laissez faire* point of view of Acts which prevented adult men from accepting their wages in the form of food, clothing, or other articles if they wished to do so.

The history of the various Truck Acts illustrates a very usual method of parliamentary experimentation. An Act is passed for one trade and when it has been found to be useful it is extended to other trades. Then a consolidating Act is passed which proceeds by *enumeration*. It is then found that the enumeration is incomplete and finally, and in the case of Truck Acts, rather late in the day, *the device of a general definition* is thought of, under which all industries are brought in, and any necessary exceptions are specially provided for. If there are omissions these will be found not in what is included, but in what is excluded.

The actual stages were mainly as follows: The Act of 1464 secured the payment of wages in lawful money to carders, spinsters, and all such other labourers as were employed by cloth makers. An Act of 1701 extended the principle to woollen, linen, fustian, cotton, and iron manufacture. There were further extensions in 1749 and 1817 bringing in several industries of recent origin and one very old industry which had been overlooked. These industries

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were the manufacture of articles made of steel, or of steel and iron combined, and of plated articles or of other articles of cutlery. By a later Act of the year 1817 a Truck Act of 1725 applying to woollen manufacture was extended "to labourers employed in working and getting coal".

The consolidating Act to which reference has been made was the Truck Act, 1831, which is still law. Section 19 of the Act contained a very wide enumeration of trades, but unfortunately the list was not complete. It was, of course, impossible by mere enumeration to provide for trades or industries which as yet were not in existence, such, for instance, as those depending on a process (e.g. electro-plating) which had not yet been discovered. It was also very difficult to include every known industry. The stock instance of omission is the case of the "navvy". During the era of the construction of canals or navigable cuts towards the close of the eighteenth century a special type of labourer was employed, who came to be known as a "navigator" or, more shortly, a "navvy". Canal construction was not in evidence in 1831 and the navvy was not provided for. Almost immediately afterwards came the era of railway construction on a large scale, and the navvy appears once more. He was scandalously treated in the matter of truck, and a Select Committee in 1846 recommended the extension of the Truck Act, 1831, to labourers employed to make railways. Nothing, however, was done till the Truck Act, 1887, which introduced a general definition taken from the Employers and Workmen Act, 1875, covering all persons (with the exception of domestic servants) engaged in manual labour who are either working under a contract of service or a contract personally to execute any work or labour.

Legislators, great and small, have for some time been thoroughly aware of the dangers of attempting to make general provisions by enumeration, however careful. For instance, Trade Boards¹ which legislated on matters of wages for particular industries and had power to make different rates for different classes, did not attempt to cover the ground by a mere enumeration of classes, but first legislated for all workers other than those put into special classes, and then fixed special rates for the special classes. By this means there were no workers who were entirely overlooked.

In 1831 it was not yet realized that workers were very often not in a position to assert their legal rights, and no provisions were inserted in the Truck Act of that year to facilitate the enforcement of the Act. The inspectorate under the Factory Act was set up two years later, and as we shall see elsewhere was a great success.

¹ Trade Boards become Wages Councils under the Wages Councils Act, 1945.

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The Truck Act of 1887 remedied this defect and imposed on the Inspectors of Mines and Factories the duty of enforcing the Acts in factories, workshops, and mines.

The first experiment in legislation for factories was the Health and Morals of Apprentices Act, 1802. It applied to all cotton and woollen mills and cotton and woollen factories in which three or more apprentices or twenty or more other persons were at any time employed. It was mainly concerned with parish apprentices for whose board, lodging, and clothing the employer made himself responsible, but it also contained provisions of more permanent interest for the lime washing and ventilation of the buildings. It depended for its enforcement (a) on a voluntary and neutral inspectorate, and (b) on the promise to informers of half any penalty imposed. This scheme for a voluntary inspectorate was not a success. In the first place the inspectorate were chosen by the local justices in session, and if they neglected to make appointments there was no central body to force them to act. In the second place, even if an inspector was appointed he was necessarily a local person, and unless he was of exceptional strength of character, he was bound to be exposed to great pressure from men of his own class and standing to do as little as possible. By 1833 the lesson had been learnt that an inspectorate to be effective must be professional and not amateur, and must in general be the servants of the central Government and not of a local authority. By the Factory Act of that year four inspectors were to be appointed by the Government to be under the direction of one of the principal Secretaries of State. This experiment was a great success, and the existence of a central inspectorate ensures not only efficient administration, but also the accumulation of the knowledge and experience on which further legislation can be based. In particular, the report of an inspector is specifically made the basis of any regulations by which the scope of the Particulars Section of the Factories Acts can be extended. With one or two exceptions the history of factory legislation is singularly free from false steps.

The provision of a central inspectorate is now part of the administration of most permanent statutes dealing with industry, such, for instance, as the Acts dealing with minimum wage legislation and national insurance schemes. The Workmen's Compensation Act stood on a different footing. Under the Acts which have been cited a definite duty was put upon the employer, regardless of the workman's desire in the matter. The master had to fence certain machinery, provide proper ventilation, pay a minimum wage, put insurance stamps on a card, etc., whether the workman demanded

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it or not, and the State provided an inspectorate to see that the employer did his duty. On the contrary, under the Workmen's Compensation Act, no duty was imposed on an employer to make any payment by way of compensation until the injured workman had made a claim. The whole basis of the Act was the assertion by the individual workman of his rights, and what the State did to make the Act effective was to provide simple and inexpensive machinery for settling disputed claims, and some supervision over agreements under which a workman's rights under the Acts could be commuted for a lump sum.

An instance of an Act imposing a general duty on an employer and not providing an inspectorate to see that this duty is observed can be found in the Wages (Temporary Regulation) Act, 1918. The reason for this was, no doubt, the temporary character of the Act. As a partial substitute for an inspectorate with power to take proceedings for breach of the Act, it was expressly provided that proceedings against an employer might be instituted by or on behalf of a Trade Union, and any party to such proceedings might appear by an officer of a Trade Union. The present writer was in a favoured position to note the working of legislation on these lines. As chairman of the local tribunal trying offences under the Act in a large industrial area he tried many cases brought by Trade Union officials, but he only tried one case brought by a non-unionist, and that broke down through the absence of the kind of evidence which only a Trade Union secretary can collect. In other words, the non-unionist, in regard to whom the employer was most likely to fail in his duty to pay the prescribed rate of wages, was virtually deprived of his rights under the Act because there was no inspectorate regularly employed in investigating the wages books of the employers. From the writer's experience in the same area as chairman of courts of referees investigating claims to unemployment benefit it was quite clear that the Act was being constantly evaded, and that through the ignorance and sometimes the carelessness of the workers concerned, many of whom were trade unionists, no proceedings were taken against employers in default. In fact, it may be taken as axiomatic that, in general, the aggrieved workman for various reasons does not play any direct part in making industrial legislation effective.

Experience under the Trade Boards Acts corroborated this. Practically the whole of the proceedings were taken on the initiative of the Ministry of Labour, acting through its investigating officers. These officers often received valuable information from Trade Unions or other sources, but the power given by the Trade Boards

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Act, 1909, to an aggrieved worker to make a complaint to the Trade Board that he or she was not in receipt of the minimum rate was hardly ever exercised. No similar provision appears in the Wages Councils Act, 1945. Instead section 11 of that Act begins with the statutory alteration of any wages contract which contravenes the Act (see *supra*) passes on to deal with penalties and proceedings for infringement of wages regulation orders, and finishes with the statement that the powers given by the section for the recovery of sums due from an employer to a worker (as part of the proceedings for infringement) are not to be in derogation of any right to recover such sums by civil proceedings. The same proviso is inserted in section 17, which enables an Inspector to institute civil proceedings on behalf of and in the name of an aggrieved worker. The right of a worker to look after himself is made as plain as possible, but obviously no reliance is placed on his assertion of his right. It is impossible therefore to exaggerate the practical importance of the central inspectorate in administration.

The failure of the voluntary and local inspectorate under the Health and Morals of Apprentices Act, 1802, and the immediate success of the very limited experiment of a paid and central inspectorate tried in 1833 have had the most far-reaching consequences. Though the value of a central inspectorate can hardly be exaggerated, it must also be borne in mind that the duties of inspectors are constantly being increased, and that there is a limit to the number of inspectors which can be maintained with due regard to economy, and a limit to the number of visits which a business can bear without dislocation. An interesting experiment is to be found in the Special Order made in 1913 for the regulation of factories and workshops in which the manufacture or decoration of pottery is carried on. The Order is an extremely detailed one but the only clause which we are now concerned with is clause 27, which sets up a system of internal inspection. A person is to be appointed whose duty it is to see to the observance throughout the factory of the regulations, to carry out systematic inspection of the working of all the regulations in the departments for which they are individually responsible. He must be a competent person and must keep in the factory a book in which must be recorded daily any breach of the regulations or any failure of the apparatus, together with a statement of the steps taken to remedy defects or to prevent the recurrence of breaches of the regulations. Accurate extracts, clearly and legibly expressed must be made of these entries once a week, signed by the factory occupier and displayed

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during the following week in a conspicuous place in the departments to which they refer, and copies of all such extracts must for the same time be displayed in a conspicuous place in the mess rooms.¹

To give all the instances of experiments in factory legislation, and recite the extensions of the successful experiments to other trades would be to write a history of factory legislation from a particular point of view, and to deal with one matter at an inordinate length. It will be sufficient if two or three more examples are given. In the case of the Particulars section (section 112 of the Factories Act, 1937, which reproduces section 116 of the Factory and Workshop Act, 1901) we have an excellent example of what may be done to facilitate legislation when an experiment has become an assured success. Instead of its being necessary for Parliament to pass fresh legislation for each extension, power was given to the Home Secretary to legislate by Special Order. What this means in practice the following figures will show. Originally only textile factories and workshops were under the Particulars section, and they numbered roughly ten thousand. The power to extend the operation of this section was created in 1895, and in 1903 somewhat more than three thousand non-textile works had been brought under this section. Ten years later no less than 27,000 non-textile works had been brought under the section and the number went on increasing.

It may be worth while to set out in some detail the stages of this experiment. The introduction of the piece work system into factories at once gave opportunities to unscrupulous employers to raise questions as to the amount and description of work given out and the agreed remuneration for it. The advantage of a ticket containing particulars of these matters—viz., the quantity given out, the description of the work, and the rate of remuneration, soon became apparent, and as early as 1824 section 18 of the Arbitration Act of that year provided "that with every piece of work given out by the manufacturer to workmen to be done there shall, *if both parties are agreed*, be delivered a note or ticket in such form as the said parties shall mutually agree upon, and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein, or respecting the same".

In 1845 two Acts were passed, some parts of which are still law, making these tickets compulsory in the hosiery trade and the silk

¹ The Report of the Chief Inspector of Factories (1919) disclosed a limited success of this experiment.

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weaving trade. In the case of the Silk Weavers Act, full particulars of the warp and weft were required and the price in sterling money agreed on for executing each yard imperial standard measure of 36 inches of such work in a workmanlike manner. The terms of this last provision suggest that manufacturers had a variable yard ! The Factory and Workshop Act, 1891, extended the compulsory giving of particulars to all the piece workers in textile factories, but drew some minor distinctions between worsted and woollen weavers (not in the hosiery trade), cotton weavers and other classes of workers. Then in 1895 power was given to the Home Secretary, on being satisfied *by the report of an inspector* that those provisions were applicable to any class of non-textile factories or workshops, to apply them by Special Order to any such class, subject to any necessary modification. Special Orders have been made in the case of textile workshops, and about forty different trades. Many other examples of extension by Special Orders under various sections of the Factory Act might be given.

A most important experiment in factory legislation was the direct outcome of conditions during the 1914-18 war. The first impulse at the outbreak of war was to relax the factory rules, and to urge everyone to make a great spurt. Had the war been a short one, this policy might have paid, but as soon as it became obvious that the war was going to be a long one it was seen that sustained production at a high level could only be maintained by taking more care of the workers, and seeing that meals were taken in comfort, that leisure time was spent in wholesome recreation, and generally that work was done under as good conditions as were possible. Welfare workers were appointed in almost all large munition factories, and the general health and comfort of the workers—and especially of the women workers—were looked after in a way that previously had been known only in a few model factories. This was all done voluntarily, but in 1916 the Home Office obtained the insertion in a miscellaneous Act of a clause¹ empowering it to make Orders making compulsory the provision of certain elementary matters of welfare. During the war eight Welfare Orders were made, and the number of these Orders was gradually increased till the passing of the Factories Act, 1937, gave the opportunity for a further step forward.

Part III of that Act deals with Welfare (general provisions) and makes compulsory (a) the supply of drinking water, (b) the provision of washing facilities, (c) accommodation for clothing not worn during working hours, (d) facilities for sitting, and (e) First Aid ;

¹Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, Section 7.

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and gives to the Secretary of State¹ power to make welfare regulations for particular factories or for classes of factories. These welfare regulations cover the provision of canteens, the supply of protective clothing, and other matters of welfare (see Sec. V, Ch. 2).

As has been already said, the growth of the Factory Acts was so based on experiment and on official information generally accumulated through the Central Inspectorate, that false steps have been remarkably few. The one outstanding instance to the contrary is contained in two Acts of the year 1867, the first being the Factory Acts Extension Act, 1867, and the second the Workshops Regulation Act, 1867. In 1861 a Commission had been appointed to inquire into the conditions of employment of children and young persons in workplaces which were not covered by any existing Factory Acts. Five years later the Commission reported in favour of bringing all workplaces under some kind of regulation, and recommended the division of workplaces into two classes according to the number of persons employed. Workplaces in which fifty or more persons were employed were to be placed in the factory class and dealt with on the lines of existing legislation, while the small workplaces were to have a less stringent code of regulations and to be under local instead of central supervision, and the two Acts of the year 1867 were framed substantially on those lines.

Such a dividing line was, of course, an entirely arbitrary line and the classification based on it is not a real classification. Its adoption and subsequent rejection should have been a warning to legislators, and we might have been spared the dividing line drawn in the Workmen's Compensation Act, 1897, between buildings thirty feet in height and less lofty buildings. In 1878, when existing factory legislation was consolidated, the numerical criterion was abandoned, and the very real distinction between workplaces where mechanical power is used and those where hand power is used, was substituted for it.

We have already seen instances of experiments that have been

¹ This power is now exercisable by the Minister of Labour. Under two sets of regulations made in 1940 and 1941 (viz. *S.R. and O.* 1940, No. 907, and *S.R. and O.* 1941, No. 2057), being in form *Defence Regulations*, all the functions of the Secretary of State under the Factories Act, 1937, and section 3 of the Hours of Employment (Convention) Act, 1936, were transferred to the Minister of Labour and National Service. As from 1st April, 1946, the Ministers of the Crown (Transfer of Functions) Order, 1946 (*S.R. and O.* 1946, No. 376) has confirmed the transfer of these functions, and has also transferred to the Minister of Labour and National Service the functions of the Secretary of State under (a) the Truck Acts, 1831 to 1940, (b) the Anthrax Prevention Act, 1910, and (c) the Checkweighing in Various Industries Act, 1919.

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tried in one trade, and then applied more generally. The Mining Industry has been a fruitful ground for experimentation.

As early as 1842 the payment of wages to coal miners on licensed premises was prohibited, and subsequent legislation as to metalliferous mines contained a similar restriction. The Payment of Wages in Public Houses (Prohibition) Act, 1883, extended this legislation to all workmen falling within a general definition which is substantially that contained in the Employers and Workmen Act, 1875.

In 1887 coal miners obtained the insertion in the Coal Mines Regulation Act of that year of four sections (sections 12 to 15) providing for the weighing of mineral gotten and the estimation of deductions by two persons, one acting for the colliery company and the other being a "checkweigher" appointed by and acting for the miners themselves, and for the choosing and payment of such checkweigher. This legislation was amended and strengthened by the Coal Miners (Checkweigher) Act, 1894, and the Coal Mines (Weighing of Minerals) Act, 1905. The Checkweighing in various Industries Act, 1919, applies the same kind of provisions to four specified industries, and to any other industry to which the provisions of the Act may be extended by regulations made by the Secretary of State.¹

The Coal Mines Regulation Act, 1908, generally known as the Eight Hours Act, prohibited a miner (with the exception of certain classes) from being below ground for the purpose of his work for more than eight hours during any consecutive 24 hours. The importance of this Act lay in the fact that while the Factory Acts had legislated quite fully in the matter of hours for women, young persons, and children, there had been no direct qualification of the right of adult male labour to work any hours which might be agreed upon. The power of the Secretary of State¹ to make regulations for dangerous trades is not limited by any restrictions as to age or sex, but, as a matter of fact, prior to 1908 no special regulations were in force limiting the hours of adult male labour, but a most important order made in 1913—namely the special regulations for the pottery industry, prohibits in certain processes labour by men in excess of certain prescribed hours per week, varying from 48 to 54 hours.

Finally, it may be mentioned that internal or self inspection has long been the practice in coal mines. Attention has already been called to this as a novelty in factory legislation, and up to the present time the regulations for the pottery industry constitute

¹ See note on p. 25.

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the only example of it. The examination of mines for safety by examiners, foremen, and others, who must have definite qualifications for their positions, and who must keep records of their inspections, has long been a feature of mining legislation, and though the type of man employed in inspection in mines may differ from the competent person whose duty it is to see that the pottery regulations are carried out, still the underlying necessity is the same in both instances and has been met by the application of the same principles.

In the second edition of this book it was said that the Workmen's Compensation Acts constituted a good example of the tentative introduction of an entirely new principle into English legislation. Now that these Acts have been superseded by the National Insurance (Industrial Injuries) Act, 1946, it might be thought that here was another instance of a false step. This is not so. Much elucidation of principles has been achieved in the course of the development of workmen's compensation, and the Act of 1946 has made considerable use of the experience gained under the older system. Up to 1897 no workman injured at his work could claim damages from his employer successfully unless he could show that the injury was due to some negligence on the part of his employer or his employer's servants. In 1897 Parliament enacted a measure which, while it left existing law standing, yet gave compensation for accidents without applying the test of negligence, and substituted for proof of the employer's negligence proof that *personal injury by accident, arising out of and in the course of the employment had been caused to the workman* seeking compensation. The words in italics have been retained in the 1946 Act.

This innovation was of a very considerable importance and was tried experimentally in the case of employment in or about a railway, factory, mine, quarry, or engineering works and certain building operations. It limited the compensation in such a way as to place roughly half the loss on the employer, and half on the injured workman. The Act proved to be a great success and one of its weaknesses, the arbitrary line drawn in respect of building operations, automatically disappeared when the Act was replaced in 1906 by a general Workmen's Compensation Act, including within its scope all manual workers. This Act of 1906 contained two further experiments which have been the basis of still further legislation. For the first time industrial legislation was extended on a large scale to non-manual workers. It is true that part of the Truck Act, 1896, included shop assistants within its scope, but the Workmen's Compensation Act, 1906, covered all non-manual

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service the remuneration of which did not exceed £250 a year. This inclusion of non-manual workers proved to be beneficial, and the Health Insurance part of the National Insurance Act, 1911, was drawn on the same lines. The Unemployment Insurance Act passed in 1920 also extended unemployment insurance to non-manual workers.

The second experiment of the Workmen's Compensation Act, 1906, was to extend its provisions with certain necessary modifications to certain scheduled industrial diseases incurred at work. The scheduled diseases were only six in number, but were of frequent occurrence, and the Home Secretary was authorized to extend the list by Order, and as early as May, 1907, he felt himself in a position to include eighteen minor industrial diseases. Further Orders have since been made.

Minimum Wage legislation furnishes a second example of an entirely new principle tentatively introduced. The outstanding experiment of recent years is undoubtedly the attempt to fix a minimum wage by law, and to attach a penalty to the non-payment of the statutory wage so fixed. Legislation of a general character began with the Trade Boards Acts, 1909 and 1918, while legislation for particular industries was seen in the Coal Mines (Minimum) Wage Act, 1912, the Corn Production Act, 1917, which was subsequently repealed, and the Agricultural Wages (Regulation) Act, 1924. More recently there have followed the Road Haulage Wages Act, 1938, the Catering Wages Act, 1943, and the Wages Councils Act, 1945, which supersedes the Trade Boards Acts. The details of this legislation will be a matter for future consideration, and as the Trade Boards Act, 1909, was the earliest Act and is the basis of the general extension which has taken place, that will furnish practically all the subject matter of the present discussion. For more than a hundred years industry had been built up on the theory of absolute freedom of contract between employer and workman in the matter of wages. The economic weakness of the workman in bargaining with his employer or prospective employer was soon demonstrated, but the long struggle of the workman to establish the right to bargain collectively is matter for a later chapter. It is sufficient for the present purpose to make clear two points. In the first place the law never recognized the collective bargain as forming part of the individual bargain between a particular employer and a particular workman, except so far as it was expressly or tacitly incorporated in the individual bargain.¹

¹ In a Scotch case reported in the *Labour Gazette* for April, 1920, p. 206, the judge said, "Each of the pursuers was separately engaged on a distinct

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An employer who is a member of an Employers' Association which has a collective bargain with a Trade Union is doing nothing illegal in making a contract of service with a member of that Trade Union in disregard of the terms of the collective bargain. Either party to such a contract can sue the other in a Court of Law and neither can set up the defence that the contract is not in conformity with the collective bargain and neither party can be subjected to any penalty for neglecting to observe its terms. Both parties run the risk of expulsion from their respective associations, but that is not a legal penalty.

The second point is this, that the protection, such as it is, afforded by collective bargaining is by no means universal, and in some trades is non-existent or practically non-existent, and even in well-organized trades is not nearly so complete as is commonly supposed. Probably this is true of every trade which has ramifications and in which the small employer has still a useful function to fulfil.

It was therefore not surprising to find that the system of individual bargaining, even though tempered to some extent by collective bargaining, brought in its train a sweated or non-living wage, which was the normal remuneration throughout some industries, and in many other industries was to be met with to a larger or smaller degree. It was arguable, of course, that while this might be a necessary consequence of individual bargaining, yet at the same time the price paid was small compared with the benefits which freedom of contract had bestowed in other directions. Anyhow, the proposal to interfere with freedom of contract met with much open hostility in some quarters, and was regarded with a good deal of doubt and suspicion even amongst persons fully alive to the evils which were sought to be abolished. The guidance afforded by an experiment in the Colony of Victoria was not of great value, as the conditions of industry in the United Kingdom were so different from the Victorian conditions. Parliament in sanctioning a limited experiment in fixing minimum wages by law proceeded with the utmost caution, and it is worth while to examine in detail the nature of the precautions adopted. Some of the precautions are necessarily permanent measures, as for instance those which insure that proposals shall be known throughout the trade and that every one concerned shall have an opportunity of sending to the Trade Board before its final decision an objection to the proposal.

contract between him and the company. They were not suing as members of a Trade Union complaining of a breach of agreement between the union and the employers, but each must be taken to be complaining of a breach of the contract with him as an individual."

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This is a common feature of delegated legislation of any importance. But even here the Trade Boards Act, 1909, proceeded with the utmost caution, for while under the Factory Act of that time the Home Secretary must allow "at least 20 days" within which persons affected may get copies of the draft Regulations and may lodge objections, the Trade Boards Act, 1909, created a proposal period of three months. The really novel precaution was the attempt to get the Trade Board minimum rate into operation by the voluntary acceptance of it by good employers in the trade, aided by the inducement held out to these good employers of having a monopoly of public contracts.

The idea of standardizing what "good employers" are already doing of their own free will had already been accepted by the House of Commons in the fair wages clauses required by resolution of the House of Commons to be inserted in Government contracts. This resolution was first passed by the House of Commons on the 10th March, 1909, and the material part of it for the present purpose runs as follows: "The contractor shall . . . pay rates of wages and observe hours of labour not less favourable than those commonly recognized by employers and trade societies (*or in the absence of such recognized wages and hours, those which in practice prevail amongst good employers*) in the trade in the district where the work is carried out." That is to say, the House of Commons, even before it passed the Trade Boards Act, 1909, was prepared, and in this it undoubtedly had public opinion behind it, to take the wage of the "good employer" and make it a compulsory wage in work done under Government contracts. By this device, too, it made it possible to have a compulsory minimum wage for this class of work even in districts where labour was unorganized and there were no recognized Trade Union rates. Under the Trade Boards Act, 1909, the good employer who voluntarily took upon himself the obligation of the minimum rate fixed under the Act was made the starting point for the subsequent extension of the minimum rate to all the employers in the trade, good and bad alike. An objecting employer could always be met with the answer—"This rate to which you are objecting is already in operation in your competitors' works." The machinery by which this position was reached consisted in the intervention of a "period of limited operation" which could not be less than six months, and might be, if the Board of Trade, and subsequently the Ministry of Labour, so decided, any multiple of six months, between the time when the Trade Board finally fixed the minimum rate and the time when it became obligatory on all employers in the industry under the Trade Board. There were two

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main sets of provisions which applied to the period of limited operation. First, employers were allowed to contract out of their statutory obligation to pay the Trade Board minimum rate by written agreements with their workpeople. Even if they neglected to make contracting-out agreements and paid less than the minimum rate, they were merely to be liable to Civil proceedings under which the workpeople could get arrears of wages, and were not to be liable to criminal proceedings and the penalties that accompany them.

In the second place a "white list" of good employers was made. Any employer might give written notice to the Trade Board by whom the minimum rate had been fixed that he was willing that the rate should be obligatory on him, and in that case he was to be under the same obligation to pay wages at not less than the minimum rate as if the period of limited operation had come to an end by the making of an obligatory order. In other words, he bound himself to pay the minimum rate. The inducement held out to the employer to put his name on the "white list" was that no contract involving employment to which a minimum rate was applicable was to be given by a Government department or local authority to any employer unless he had given to the Trade Board the written notice already described.

It is worth noting in passing that the device of using the "good employer" as a standard appears in more recent Acts of Parliament. Unemployment insurance legislation from 1911 onwards in laying down the conditions on which an offer of employment outside a workers' district is to be regarded as suitable provides that wages and conditions must conform to the Trade Union agreements observed in such district, or failing any such agreement, then be such as are generally recognized in such district by good employers. The Road Traffic Act, 1930, also provided that wages and conditions shall not be less favourable than the wages which would be payable and the conditions which would have to be observed under a contract which complied with the requirements of any resolution of the House of Commons for the time being in force applicable to contracts with Government departments. The Sugar Industry (Reorganization) Act, 1936, and the Air Navigation Act, 1936, both contain similar provisions.

When the first four Trade Boards got to work the period of limited operation was perhaps less useful than might have been expected. It is true that no period was ever extended beyond the statutory minimum of six months, but even then the intervention of this period meant that a year or thereabouts elapsed

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between the proposal of the rate and its being made obligatory on the whole trade. Also during the period of limited operations some employers were paying wages at one rate and others were paying at another rate. This, of course, was nothing new in itself, but there was a new and most important factor. The good employer for the first time realized that there was now legislation in existence under which he could be protected from undercutting and his unscrupulous competitors could be made to pay the same rate of wages as he was paying. The result of this was that the good employer became an enthusiastic advocate for the extension of the minimum wage to all employers in the trade. This device of the limited period of operation and the "white list" may have been essential to the passage of the first Trade Boards Act, but by the time of the second Act it was already felt to be an incumbrance rather than a protection, and the Trade Boards Act, 1918, put an end to it.

An experiment on rather different lines was made when the Cotton Manufacturing (Temporary Provisions) Act, 1934, enabled statutory effect to be given to rates of wages agreed between representative organizations of employers and workmen. Some details of this Act will be found in the next section, but the following quotation from the Report of the Minister of Labour for the year 1934, is germane to the points that have just been discussed. "The Act is intended to restore the effectiveness of the voluntary system and not to replace it, and it is regarded as an experiment in a field which has been the subject of much discussion. An important feature is that the enforcement of rates of wages which may be given statutory effect is left to those engaged in the industry, and no provision is made for a special government inspection service. This provides an incentive to organizations and self-government. Further, the procedure before an Order can be made, and the provisions for the termination of an Order, are calculated to prevent unsuitable conditions from being imposed or maintained."

With regard to false steps the position is simpler. Till recently the only important step which had to be retraced was the factory legislation of 1867. The Truck Act, 1896, was considered by a departmental Committee of the Home Office after ten years' experience of its working, and drastic alterations were recommended, but nothing has been done.

Of course, many Acts of Parliament have in the last century been passed and repealed, but in the case of industrial legislation the new Act has generally been an Act to consolidate and amend

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the old law and the old Act has a new lease of life in a modified form.

The Employers' Liability Act, 1880, is an example of a step useful as far as it goes, but not leading to further progress in a direct line.

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INTRODUCTION

We have already seen that English Common Law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy. The bargain so made is left to be carried out in the usual manner and according to the common law view as to the performance of contracts in general, and if there is a breach of contract on either side the State provides Courts of Law in which the rights of the parties can be enforced. But this general statement is, of course, subject to qualifications. In the first place, English Common Law was not, so far as it dealt with commercial or industrial matters, a coherent body of law grounded on intelligible principles before the time of Lord Mansfield, who was Chief Justice from 1756, and as regards industry it was limited in its provisions by the actual circumstances of industry for the time being. It is roughly true to say that what may be termed the common law view of industrial relationship was most powerful during the hundred years from 1750 to 1850. During that period the old statutory provisions for fixing wages were either practically obsolete or actually dead. There was a statutory protection of the wage earner against the dangers of truck, and as a set off against this the employer's remedy for a breach of a contract of service was far more drastic than the workman's right. In fact, the employer's remedies were somewhat of a penal character. The historical method of approach, though always interesting and educational, in this particular instance lands the reader in a mass of confusing detail, and the stages by which statutory interference has been developed are purely empirical, so that the balance of advantage seems to lie in taking the substance of a contract of service and grouping together statutory interferences with the various items of the contract. Thus this section will deal with statutory interferences in regard

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to wages. The next section will deal with statutory interferences with the hours of labour. Another section will deal with statutory measures in regard to accidents occurring at work. Yet another section will set forth the statutory provisions for the general health of workpeople at work. The present section dealing with statutory interferences in regard to wages will be sub-divided on the same practical lines. In practical life the first step is to fix the rate of wages to apply to an individual worker, the second step is to calculate the wages payable to him on pay day, the third step is to pay him those wages, and in default of payment there is a fourth step—namely, legal proceedings to recover the wages due. At each of those steps experience has shown that there are certain dangers and the legislature has stepped in with an attempt to avert those dangers. At the first stage there is the danger of the sweated or inadequate wage, which has been dealt with by various forms of minimum wage legislation. At the second stage there is the danger that the unscrupulous employer will miscalculate the wages actually earned by the piece worker, and that worker will have no adequate means of finding out the miscalculation. This has been dealt with by the particulars clause of the Factory Acts and by legislation setting up checkweighing in various industries. At the third stage there is the danger that an employer may pay in goods instead of cash and may keep back part of the wages as a fine or as compensation for bad work, spoilt material, or other matters. This danger has been dealt with by the series of Truck Acts. At the final stage there are the dangers of expense and delay in recovering wages and partial loss of wages in the case of an insolvent employer, and these have been met by various provisions in the Employers and Workmen Act, 1875, and in bankruptcy legislation.

CHAPTER I

THE STATUTORY DETERMINATION OF WAGES (MINIMUM WAGE LEGISLATION)

Minimum wage legislation began with the Trade Boards Act, 1909, and the experimental nature of this Act has already been studied on pp. 28-32. Then followed a very special piece of legislation for the Mining Industry, known as the Coal Mines (Minimum Wage) Act, 1912. Next the scope of Trade Board operations was very much extended by the Trade Boards Act, 1918, and except for certain emergency regulations introduced during the 1939-45 war, the Trade Boards Acts, 1909 and 1918, remained in force till the passing of the Wages Councils Act, 1945. Meanwhile in 1917 the Corn Production Act, Part II, had set up an Agricultural Wages Board. This Act was repealed in 1920 but in 1924 the Agricultural Wages (Regulation) Act, 1924, was passed. Later the Road Haulage Wages Act, 1938, and the Catering Wages Act, 1943, were enacted to deal with those special industries. The legislation for special industries will require a good deal of separate examination, but consideration in the first instance can be given to the general legislation contained in the Trade Boards Acts, 1909 and 1918, and the Wages Councils Act, 1945, and certain general aspects of the other Acts.

In the earlier editions of this book before any detailed consideration was given to the Trade Boards Acts, two general questions were discussed. The first was the mental attitude of employers as a whole to minimum wage legislation, and the second was the extent to which English legislation is indebted to experience elsewhere. It does not now seem necessary to give much space to these questions. The latter subject is now too historical, and the former one received a clear and definite answer in the second reading Debate in the House of Commons on the Wages Councils Bill. In the course of that debate Mr. Hugh Molson said: "My honourable friends of the Tory Reform Committee and I most heartily welcome this Bill. . . . I suppose there have been very few new ventures on the part of Parliament in endeavouring to regulate industrial conditions in the country which have proved such a remarkable success as the Trade Board legislation." At the close of the debate the Bill was given a second reading without a division.

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All this is very different from the position 25 years earlier when the Peel Commission was set up to investigate the working of the Trade Boards Acts. All the Acts dealing with minimum wage legislation make provision for setting up certain Wage-fixing Boards, composed on the lines of equal representation of employers and workers with a neutral element of appointed members, for the purpose of fixing wages. The preliminary points to be investigated are: (a) What body sets up the Wage-fixing Board? (b) Has this constituting body a general or limited power of creating Boards? (c) Are the Boards when set up independent bodies, and if not completely independent, what measure of control is reserved to the constituting body, or what statutory directions are given to the Boards as to their policy?

The Coal Mines (Minimum Wage) Act, 1912, is the simplest case and can be very shortly disposed of. The Act was passed in an emergency and its object was to get a minimum wage in operation as quickly as possible in the twenty-two districts into which the mining areas of Great Britain had already been divided for Trade Union purposes. The wage-fixing bodies were to be any Joint District Board "recognized by the Board of Trade". After recognition of the Joint District Board there was no further interference by the Board of Trade.¹ No general deductions are to be drawn from this Act.

The Agricultural Wages (Regulation) Act, 1924, will require somewhat more attention. The constituting authority in this case was the Minister of Agriculture and Fisheries. His duty was to establish an Agricultural Wages Committee for each county in England and Wales, and an Agricultural Wages Board for England and Wales. Both the Committees and the Board itself are made up of representative employers and representative workers in equal numbers, and a neutral element chosen by the Minister. When once the County Committees and the Agricultural Wages Board were set up there was to be no further interference by the constituting authority, but Parliament inserted a direction as to their policy.

The direction was that in fixing minimum rates a Committee

¹ Mines are now under the Minister of Fuel and Power. In 1920 the Mining Industry Act, 1920, established a department of the Board of Trade known as the Mines Department under a Parliamentary Secretary, known as the Secretary of Mines. Then by *S.R. and O* 1920, No 2193, all powers of a Secretary of State under enactments relating to Mines and Quarries, were transferred to the Board of Trade. Finally, by *S.R. and O*, 1942, No 1132, the functions of the Board of Trade were transferred to the Minister of Fuel and Power so far as regards (a) coal, minerals, mines and mining industry, quarries, and petroleum, (b) gas undertakings, (c) electricity undertakings, and (d) hydraulic power undertakings.

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should, so far as was practicable, secure for able-bodied men wages which in the opinion of the Committee were adequate to promote efficiency and to enable a man in an ordinary case to maintain himself and his family in accordance with such standard of comfort as might be reasonable in relation to the nature of his occupation. The question may be asked, did this give any aggrieved person the right to test the legality of a rate of wages either on the ground of the inadequacy of the rate to achieve the objects thus set forth or on the ground that the rate is clearly in excess of what may be necessary for that purpose? If the application were to quash the rate as inadequate the answer might be that the Committee had done what was practicable, and it is difficult to imagine a Court of Law going into a question of that kind. If the application were to quash the rate as excessive the answer would probably be that this provision is manifestly intended to secure that the minimum wages should not be too low. The true interpretation seems to be that this Parliamentary direction was to be borne in mind by the Committee in its discussions, and also by the Minister in exercising his power of directing the reconsideration of a minimum rate, and was not intended as the basis of possible appeals to the Courts of Law, and that the Committee, so long as it considered the rate from the standpoint of this direction, was an independent body free of direct interference from any revising authority.

Under the Trade Boards Act, 1909, the constituting authority was the Board of Trade, but when the Ministry of Labour was instituted this function of the Board of Trade was transferred to the Ministry of Labour.¹ Only four trades were scheduled for inclusion in the original Act in 1909, but the Board of Trade could make a provisional order applying the Act to any other specified trade if they were satisfied that the rate of wages prevailing in any branch of the trade was exceptionally low, as compared with that in other employments, and that the other circumstances of the trade were such as to render the application of the Act to such trade expedient. In other words, the Act could only be extended to such other trades as in the opinion of the Board of Trade were in whole or in part sweated trades, and even then extension was by Provisional Order. A Provisional Order requires express Parliamentary confirmation before it becomes law, and an opposed Order is referred to a Parliamentary Select Committee which acts as a judicial tribunal and hears witnesses for and against the

¹ For the purposes of the recent war the Ministry of Labour became the Ministry of Labour and National Service. It will be convenient to retain the original title.

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confirmation of the Order. A few years after the Act of 1909 had come into operation the Board of Trade made a Provisional Order extending the Act to some five fresh trades, but during the proceedings before the Select Committee it was forced to abandon one of these trades. Hence under the Act of 1909 the constituting authority had a strictly limited power of creating Trade Boards, and Parliament retained its power of direct interference with proposed extensions.

The Trade Board when constituted under the Act of 1909 was able without the sanction of any other body to bring a minimum rate into limited operation. What limited operation amounted to has already been explained on pp. 30-2, and as limited operation has been abolished there is no purpose in examining it in further detail. The relevant point here is that the constituting body was also the body to decide at the end of the six months of limited operation whether it should make an Obligatory Order or an Order of Suspension deferring the Obligatory Order for at least six months. The grounds for making an Order of Suspension were that the constituting body were of opinion that the circumstances were such as to make it premature or otherwise undesirable to make an Obligatory Order. The constituting body had also the right to direct the Trade Board to reconsider any minimum rate, whether an application had been made for that purpose to the Trade Board or not. As a matter of practice the constituting authority, while limited operation was a part of Trade Board machinery, never made a Suspension Order, and never directed a Trade Board to reconsider a minimum rate.

The provisions of the Trade Boards Act, 1918, in regard to these matters were on very different lines, and showed very clearly the influence of the reports of the Whitley Commission. The ultimate recommendation of that Commission was that industries should be grouped in two classes and that the experiment of National Industrial Councils should be tried with regard to industries in which both employers and workpeople were fully organized and that Trade Boards should be formed for all other industries. The reports also showed that Parliament considered that Trade Boards had so far been a success, and that the extreme caution of the Act of 1909 might be relaxed. Under the Act of 1918 the operation of the Trade Board Acts could be extended to fresh trades by Special Order instead of by Provisional Order. Under the procedure for the making of a Special Order the Minister first drew up a draft order, published it and allowed forty days for objections. If there were substantial objections, which the Minister was not prepared

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to meet, he was bound to direct a public inquiry, presided over by a competent person selected by him but not in the employment of any government department. If the Commissioner suggested any alterations in the draft order, the Minister either agreed to accept them or abandoned the order altogether. A Special Order had not to be confirmed by Parliament, but was only laid before each House of Parliament. Within the first forty days of the sitting of Parliament either House could present an address to the Crown praying that the order might be annulled and in default of any such address being carried within that period the Order became irrevocable. The class of trades in which Trade Boards could be set up now became "any specified trade as to which the Minister of Labour is of opinion that no adequate machinery exists for the effective regulation of wages throughout the trade, so that having regard to the rate of wages prevailing in the trade, or any part of the trade, it is expedient that the Trade Boards Acts should apply to that trade". This is very much wider than the old provision with its reference to exceptionally low rates of wages. In fact, if a National Industrial Council were formed for a trade but failed to prove itself adequate to regulate wages throughout the trade, and the rate of wages in fact compared unfavourably with those of other trades, there did not seem any legal reason why a Trade Board should not be set up for such a trade.

At the time of the passing of the Wages Councils Act, 1945, there were 52 Trade Boards in existence, of which six were Boards for Scotland, corresponding to similar Boards for England and Wales. They became Wages Councils.

The Act of 1918 in taking away the period of limited operation abolished the power of a Trade Board to bring a rate into operation solely on its own initiative. When the Trade Board had finally fixed a rate, its next duty was forthwith to notify the Minister of Labour and to suggest a date from which the rate was to become effective. When the Minister received this notification he had forthwith to take the matter into his consideration, and he could, if he thought it necessary, refer it back to the Trade Board for reconsideration; otherwise he had to make an order confirming the rate, and unless there were special reasons for postponement he had to make the order within one month of the receipt of the notification from the Trade Board. The actual notice of the rate went out to the trade from the Secretary of the Board with a heading which stated that the Trade Board had made the rate and that the Minister had confirmed it and had fixed a stated date from which it was to be effective.

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The power given to the Minister of Labour to send a rate back for reconsideration was little used, and probably no minister cared to hold himself out as a Court of Appeal to which the employers' side or the workers' side of a Trade Board could go whenever they failed to secure what they wanted from the Trade Board.

There was one other provision which gave the Minister of Labour a direct control over Trade Board legislation. It concerned the period which must elapse before a variation in an existing rate could be proposed. In almost every trade an employer enters into contracts to deliver goods at a fixed price over a stated period. If his wages bill is liable to constant fluctuations he finds it impossible or highly speculative to enter into such contracts. The Act of 1918 had more than one method of dealing with this difficulty. For instance, the Trade Board could fix a rate for a definite period and then at the expiration of the period, unless the Trade Board expressly determined otherwise, the rate so fixed came to an end. The Trade Board could also fix a series of rates to take effect for successive periods. If, however, a Trade Board merely fixed a rate for an undefined period then the following provision applied. Until the rate had been effective for six months the Trade Board could not without the consent of the Minister of Labour, to be given on an application made to him by the Board for the purpose, give notice of a proposal to vary the rate, and the Minister could not consent to such an application unless he was satisfied that the special circumstances of the case rendered it desirable that such notice should be given immediately.

This provision does not reappear in the Wages Councils Act, 1945. The policy of the new Act is to emancipate the Trade Boards from leading strings, and to trust them to take notice of all relevant trade considerations. The writer can remember many instances in which a Trade Board made application to the Minister for leave to issue a proposal for varying rates which had been effective for less than six months and cannot recall a single instance in which the Minister refused to allow the proposals to go forward.

The third point as to the relationship between the constituting authority and the individual Trade Boards concerned administration. The Act of 1909 in appearance set up a dual authority. Under section 10 any worker or any person authorized by a worker might complain to the Trade Board that the wages paid to the worker were at a rate less than the minimum rate, and the Trade Board must then consider the matter and might, if they thought fit, take any proceedings on behalf of the worker. Under section 14 of the Act of 1909 the Ministry of Labour had power to appoint

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such officers as they thought necessary for the purpose of investigating any complaints and otherwise securing the proper observance of the Acts, and such officers were to act under the direction of the Ministry of Labour unless the Ministry placed its officers or any of them under the directions of any Trade Board. In practice direct complaints to a Trade Board by an aggrieved worker were exceedingly rare, so that a Trade Board was very seldom in a position to consider whether it would exercise its powers of taking proceedings. In such rare instances as occurred, the Trade Board found itself faced with various difficulties. These were discussed in the second edition of this book, but here it is sufficient to say that the matter has now become merely historic, as section 10 does not reappear in the Wages Council Act, 1945. There is a further point which is worth discussion. An employer as a general rule was prepared to observe the determination of a Trade Board if he had an official assurance that such determination was really binding on him, and he would not then go to the length of fighting the matter out in a Court of Law. Who was the proper person to give such official assurances? Was it the Secretary of the Trade Board giving expression to the view of the Trade Board, or was it an official of the Ministry of Labour giving expression to the view of the Ministry? The practice was that the Minister, and the Minister alone, expressed an opinion on questions of scope, but before giving an opinion on a new point the Minister consulted the Trade Board concerned, and in a large majority of cases he accepted the decision of the Trade Board thereon. There is no reason to suppose that the turning of Trade Boards into Wages Councils will change this established practice.

We may sum up by saying that in the case of Trade Boards the control of the Ministry of Labour over their legislation was very slight, but that administration was not merely controlled by but substantially vested in the Ministry.

In the case of the Road Haulage Wages Act, 1938, the constituting body is again the Ministry of Labour. Section 1 of the Act enacted that there should be established by the Minister (a) a Board for Great Britain to be called the Road Haulage Central Wages Board, and (b) Area boards, of which one was to be for Scotland, to be called the Scottish Road Haulage Area Wages Board, and one for each of the areas in England specified in the First Schedule to the Road and Rail Traffic Act as originally enacted. There was also a provision that the Minister might, after consultation with the Central Board and any Area Board appearing to him to be concerned, by order alter such areas in England. The

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proposals of the Central Board must be submitted to the Minister, and when he has received them, unless he considers it necessary to refer them back to the Central Board he must *as soon as may be* make an order (road haulage wages order) giving effect to the proposals. As soon as the Minister has made the Order, he must give notice of its making to the Central Board, and the Central Board gives notice of the Order and its contents to the employers' workers concerned. The date of its coming into operation is set out in the Order.

If the Minister refers back to the Central Board any proposals submitted to him, the Board must reconsider them, and may amend the proposals and resubmit them. Upon resubmission the Minister has two lines of action: (a) If in his opinion the amendments do not effect important alterations in the proposals originally submitted and are such as he approves, he can proceed to make the Road Haulage Wages Order. (b) If his opinion is that the amendments are important then the Minister must remit the amended proposals to the Central Board with the direction that the same notices are to be given as in the case of fresh proposals.

Under section 11 the Minister may appoint such officers as he *thinks necessary for the purpose of securing the proper observance of the Act*. These officers act under the direction of the Minister. Under the Trade Boards Acts it had become an established practice for the Boards to receive periodical reports of inspection, and to discuss these reports and to make representations when thought necessary, on both inspection and proceedings to enforce their orders. There is no reason to suppose that other wages boards will be treated differently.

The Catering Wages Act, 1943, appears on the face of it to be a rather formidable piece of legislation for a section of industry, but as regards the constitutional principles which are under consideration in this section, it establishes a line of action which is closely followed in the more general enactments contained in the Wages Councils Act, 1945. It will help the reader to understand the enlarged outlook of these two Acts if their titles are set out in full. The Catering Wages Act, 1943, "is an Act to make provision for regulating the remuneration and conditions of employment of catering and other workers and, in connection therewith, for their health and welfare and the general improvement and development of the industries in which they are employed." The Wages Councils Act is "an Act to provide for the establishment of Wages Councils, and otherwise for the regulation of the remuneration and conditions of employment of workers in certain circumstances".

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In both Acts the greatest care is taken that the Minister should not exercise his power of bringing Wages Boards into existence until he is satisfied by independent inquiry that the same ends cannot be attained by agreement between organizations representing employers and workers respectively. Under the Catering Wages Act, 1943, the first step was the establishment by the Minister of Labour of a Catering Wages Commission. The Commission is to consist of not more than three independent members, and not more than two persons representing employers and two persons representing employed persons, the two latter classes being equal in number. These representative members are to be persons qualified for their position but not themselves connected with the hotel or catering trade. For investigations or inquiries the Minister can appoint assessors to the Commission, but an assessor has no vote, and cannot be a party to any report or recommendation of the Commission.

The general functions of the Commission are (a) to make inquiries into the existing methods of regulating the remuneration and conditions of employment of workers covered by the Act, and into any other matter affecting the remuneration, conditions of employment, health, or welfare of such workers; (b) to make inquiries into means for meeting the requirements of the public; (c) to make recommendations to any Government department with respect to any matter within (a) and (b); and (d) to make reports to the Minister including an annual general report of their proceedings which the Minister must lay before Parliament.

If the Commission are of opinion that existing machinery for wage regulation by agreement between organizations representing employers and workers respectively (e.g. a joint Industrial Council) is adequate, or that it is practicable to so improve it as to make it adequate then the Commission may so report to the Minister. If, however, the Commission are of opinion as respects any workers within the Act and their employers that such machinery for regulating the workers' remuneration and conditions of employment either does not exist, or is not and cannot by any improvement which is practicable be made adequate, then the Commission may make a "Wages Board recommendation" for the establishment of a Wages Board in respect of those workers and those employers.

The Commission must give the prescribed notice of their proposal to make this recommendation. Not less than 21 days must be allowed for written objections to come in, and these objections must be considered by the Commission. Where the Minister receives a Wages Board recommendation he may, if he thinks fit by order

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provide for the establishment of a Wages Board for the workers and employers concerned. As an alternative the Minister may refer back the recommendation to the Commission for further consideration.

If the Commission are of opinion that any Wages Board is no longer necessary or that its field of operation should be varied, they may make a recommendation to the Minister accordingly, following the same procedure as in making a Wages Board recommendation. The Minister may give effect by order to such a recommendation. Administration is left in the hands of the Minister on the same lines as already laid down in the case of Trade Boards.

The Wages Councils Act, 1945, is a general Act embodying the experience of the preceding 36 years. It takes over the existing 52 Trade Boards and makes them the first Wages Councils. For the future there are three methods of establishing new Wages Councils. In the first case the Minister of Labour acts on his own initiative ; in the second and third he can only act on a Wages Council recommendation ; but before making a Wages Council order constituting the Wages Council, the Minister, whether acting in pursuance of a Wages Council recommendation or not, must give notice of his intention to do so in the *London and Edinburgh Gazettes*, and specify the time not being less than 40 days within which written objections may be sent to him. What he does, if objections come in, varies according to the method which is being used, and is dealt with hereafter.

(a) A Wages Council order may be made by the Minister if he is of opinion that no adequate machinery exists for the effective regulation of the remuneration of the workers described in the order, and that having regard to the remuneration existing amongst those workers, or any others, it is expedient that such a Council should be established. This is in substance a repetition of the power given to the Minister under the Trade Boards Act of 1918 to set up a Trade Board. If there are substantial objections to the draft Wages Council Order which the Minister is not prepared to meet, he may refer the draft order to a commission of inquiry¹ for inquiry and report. He must consider the report and may then make an order either in the terms of the draft or with such modifications as he thinks fit.

(b) An application for the establishment of a Wages Council may be made to the Minister by either a Joint Industrial Council, conciliation board, or similar body, or any organization of workers

¹ The composition of the Commission is the same as in the Catering Wages Act, 1943 (see p. 47).

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and employers which claim to be habitually taking part in the settlement of remuneration and conditions of employment on the ground that the existing machinery is likely to cease to exist or be adequate. If the Minister is satisfied that there are sufficient grounds for his action he may refer the application to a commission of inquiry.

(c) The Minister may on his own initiative ask a Commission of inquiry to consider whether a Wages Council should be established if in his opinion either no adequate machinery exists for the effective regulation of the remuneration of any workers or the existing machinery is likely to cease or be adequate for the purpose and a reasonable standard of remuneration amongst those workers will not be maintained.

A Commission of inquiry set up under (b) and (c) must consider not only the subject matter of the reference but also any other question or matter relevant thereto, including the question whether other classes of workers should be brought in. It is open to the Commission to report to the Minister that the existing machinery can by practicable improvements be made adequate, and to include in its report any suggestions which it may think fit to make as to the improvement of that machinery. The Commission may also report that there is no reason to believe that the machinery is likely to cease to exist or be adequate. If, however, the Commission is of opinion that the machinery is inadequate and cannot by practicable means be made adequate, or does not exist, or that the existing machinery is likely to cease to exist or be adequate, and that as a result a reasonable standard of remuneration amongst the workers is not being or will not be maintained, then the Commission may embody in its report a Wages Council recommendation for the establishment of a Wages Council. The Minister on receiving that recommendation may make a Wages Council Order. As stated above, the Minister gives notice that he proposes to make the order, and allows time for written objections to come in. So far as objections are repetitions of objections raised at the Commission of inquiry and expressly dealt with in the report the Minister may disregard them, and he may also disregard frivolous objections. If the rest (if any) of the objections can be met by minor amendments of his order he may so amend it, and issue it as amended. If, however, there should be new and substantial objections, the Minister may, if he thinks fit, either (a) incorporate them in a new draft order, which must be republished, or (b) refer the draft order to a Commission of inquiry for inquiry and report, on which he can base a new draft order. Where the Minister makes a Wages

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Council order he must publish it in the prescribed manner, together with the report of any Commission of inquiry relating to the order.

The next point to consider is the composition of Wage-fixing Boards. The Trade Boards Act, 1909, settled the general form of these Boards. Under section 11 of that Act members representing employers and members representing workers had to be appointed in equal proportions. There also had to be appointed members, who were the neutral element, and were chosen by the Minister. As regards the representative members the selection might be either by election or nomination or partly by one method and partly by the other method. In practice the method was for the Ministry of Labour to nominate after consultation with the organizations on both sides. There was nothing in the Act to render ineligible either an employer who stood outside the employers' association or a worker who was a non-unionist. The number of representative members would naturally vary from trade to trade according to the size of the trade and also according to the number of sections of the trade. To make the position of each Trade Board quite clear a separate set of regulations under which the Board was constituted was drawn up for each Board, though the Ministry of Labour had power, if it pleased, to make regulations to apply generally to all Trade Boards. While the subject of equal representation is being dealt with it will be convenient to mention that the regulations invariably prescribed the method of voting, and that though different methods were adopted for different Boards the unifying principle was that the two sides should have equal voting power, notwithstanding unequal attendances. The simplest method of securing this was to arrange that the number of persons allowed to vote on each side should be the number present on the side which had the smaller attendance. Where, however, a side was made up of sections whose interests might clash, another system was sometimes adopted in order to avoid giving undue weight to the opinion of some particular section. For instance, suppose a Trade Board was made up of twenty workers, sixteen employers and four middle-men on the employers' side, and three appointed members. If there was a full attendance the voting power of the two sides was equal, but if the workers and the four middlemen came to an agreement they could carry any resolution against the votes of the ordinary employers and the appointed members. The fate of the employers was in the hands of the middlemen and not of the appointed members. To avoid this situation one form of regulations gave the majority of either side the right to claim a vote by sides. In the instance given the joint resolution of the

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workers and middlemen would be voted against by the employers' side, a preliminary vote of sixteen to four being in favour of that course, and it would be voted for by the workers' side, and there being an equality of side votes for and against, the appointed members would have the decision. Where the regulations provide for a side vote unequal attendances on the two sides were immaterial.

The three statutes now in force, the Road Haulage Wages Act, 1938, the Catering Wages Act, 1943, and the Wages Councils Act, 1945, contain no serious variation of either the law or the practice of the Ministry of Labour, except that the provision for the election of representative members, which had never been used has been abandoned. As far as Wages Councils are concerned the practice of the Minister has been authoritatively stated to be as follows: "When a Wages Council is constituted the representative members are selected with a view to giving representation as far as possible to (a) all the main types of establishments and classes of workers affected, and (b) the principal districts or centres in which the workers are employed. All Wages Councils appointments are personal appointments and are made by the Minister. Before appointing representative members the Minister is required to consult organizations representing respectively the employers and workers concerned, and while no seats are allocated for the purpose of giving representation to such organizations, it is the normal practice to appoint candidates suggested by them as far as they satisfy the above-mentioned requirements. Failing a sufficient number of suitable nominations from this source candidates may be obtained by other methods." The number of representative members varies according to the interests to be represented. Another small variation is in the size of the neutral element, or "appointed members". Under Trade Board legislation the number of appointed members had to be less than half the total of representative members. In practice the usual number was three, and very occasionally five. Under the Road Haulage Wages Act, 1938, the Minister has to appoint not less than three nor more than five independent members of whom the Minister must appoint one as Chairman, and may appoint another as deputy Chairman. A Wages Board set up under the Catering Wages Board has "not more than three persons chosen as being independent persons", with similar provisions as to Chairman and Deputy Chairman. The Wages Councils Act, 1945, uses the same words, for the neutral element in a Wages Council.

The Agricultural Wages Board was constituted on the same lines

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as a Trade Board, except that the appointed members must not exceed one-quarter of the total membership of the Board. The Coal Mines (Minimum Wage) Act, 1912, followed the Trade Boards Act in providing for equal representation of employers and workmen, but differed from it in the method of constituting the neutral element. Each of the twenty-two Boards recognized under the Coal Mines Act has the right to elect its own chairman, and the constituting authority only comes into play when the two sides cannot agree on a chairman. The chairman is usually a single person, but the constituting authority when appointing may select three persons to act jointly as chairman.

Regulations of the Ministry of Labour also governed the constitution of the District Committees (if any) of a Trade Board. A Trade Board was not compelled to establish district committees, but under section 12 of the Trade Boards Act, 1909, it might establish them and the Trade Board settled the areas for which such committees were to act. A district trade committee consisted partly of members of the Trade Board itself and partly of persons not being members of the Trade Board, but representing employers or workers engaged in the trade, and chosen by the Ministry in accordance with regulations made for the purpose. There had to be at least one appointed member on a district trade committee, and local employers and local workers were equally represented. The practice of Trade Boards in establishing district Trade Committees varied very much.

During the recent war the active share of district Committees in recommending rates of wages was suspended, and they had merely to be informed by the Trade Board of the nature of any wages regulation proposals submitted to the Minister. When the Trade Boards automatically became Wages Councils, any district Committee of a Trade Board continued to exist until the Minister otherwise directed, but no further district trade Committees may be set up by Wages Councils.

The powers of the various wage fixing bodies must now be considered. As the Wages Councils Act, 1945, takes over the existing Trade Boards, some of which were constituted under the Trade Boards Act, 1909, Wages Councils are in effect the oldest of these bodies, and will be given first place. A Wages Council has power to submit to the Minister "Wages regulation proposals (a) for fixing the remuneration to be paid, either generally or for any particular work, by their employers to all or any of the workers in relation to whom the Council operates ; (b) for requiring all or any of such workers to be allowed holidays by their employers."

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Fixing remuneration includes fixing holiday remuneration. The rules as to holidays with pay can be deferred.

Before submitting wages regulation proposals to the Minister a Wages Council must make such investigations as it thinks fit, and must publish in the prescribed manner, notice of the proposals, stating the place where copies of the proposals may be obtained, and the period not being less than 21 days within which written representations with respect to the proposals may be sent to the Council. The Council must consider any representations so made to it, and after making such further inquiries as it considers necessary may then submit the proposals to the Minister either without amendment or with such amendments as it thinks fit, having regard to the representations. This procedure involves two meetings of the Council, the first to make proposals and the second to confirm them. This was the established Trade Board procedure. In the early part of the recent war the Trade Boards and Road Haulage Wages (Emergency Provisions) Act, 1940, was passed to expedite proceedings, and to dispense with unnecessary meetings. Some of the experience gained has been utilized in the drafting of the Wages Councils Act. The period for sending in "objections" to a proposal was temporarily altered from a minimum of two months to 14 days, and the Wage Councils Act, as we have seen, adopts a minimum period of 21 days during which representations can be sent in. Again under certain circumstances a confirming meeting was dispensed with. This provision is included in the Wages Councils Act which enacts that if the Council, before publishing its proposals, resolves that in the event of no representation with respect to the proposals being made to it within the prescribed period the proposals shall, without more, be submitted to the Minister, then the proposals shall, if no representation is so made, be submitted to the Minister accordingly.

The Minister on receiving any wages regulation proposals must make a "Wages Regulation Order" giving effect to the proposals from a date specified in the order. The power of the Minister to refer the proposals back to the Council has already been dealt with (pp. 43-4).

As soon as the Minister has made a Wages Regulation Order he must give notice of it to the Wages Council, and that Council must give such notice of the order and its contents as may be prescribed for the purpose of informing, so far as practicable, all persons who will be affected by it.

Any wages regulation proposals, and any Wages Regulation Order for giving effect to it, may make different provisions for different

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cases, and may also contain provisions for the amendment or revocation of previous Wages Regulation Orders. These very general terms take the place of detailed powers given by the Trade Boards Acts, 1909 to 1918, but as the 52 Trade Boards, with their determination of wages rates expressed in terms of those powers, are kept alive as Wages Councils, it seems worth while to state in some detail the kind of wages rates these Wages Councils have in fact taken over from the old Trade Boards.

It was a definite duty of a Trade Board to fix a general minimum rate of wages for time work in their trade, and it could only be relieved of this duty on making a report to the Ministry of Labour that it was impracticable to fix such a rate. The general minimum time rate was the basis of all further legislation, whether it were for learners, for piece workers, for overtime, or for individual permits.

A general minimum time rate might be fixed as so to apply universally to the trade, or so as to apply to any special process in the work of the trade, or to any special area, or to any class of workers in the trade, or to any class of workers in any special process, or in any special area.

This brings the reader into touch with some of the most difficult problems of wage fixing legislation. For instance, should home workers have a higher or a lower rate than factory workers? Should workers in Leeds have the same minimum rate as those in a small town, say, in Norfolk or Cornwall? Should workers in the tailoring trade engaged on a process like pressing have the same minimum rate as machinists? How far should age or experience in the trade be a basis for a differentiation of minimum wage?

Every one of those questions had to be answered in the case of one of the four original Trade Boards—namely, the Wholesale Tailoring Trade Board.

The tendency of the earliest Boards was to simplify their work as much as possible. The Tailoring Trade Board, for instance, reserved its right to legislate on different lines for home workers and factory workers by proposing (a) a rate for home workers and (b) a rate for workers other than home workers, and then simplified the position by making the same rate for both classes. On the question of areas the same Board had a very strong feeling that differentiation by area was impossible. Two Tailoring Boards were in fact constituted—one for Great Britain and one for Ireland. The Board for Great Britain fixed a minimum rate for the whole of Great Britain and when the Irish Board fixed a lower rate for Ireland it began passing a series of unavailing resolutions of protest.

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Up to the passing of the Act of 1918 no Trade Board had differentiated its rates by area, but with the large increase in the number of Boards brought about by that Act the position changed.

Where a Trade Board was dealing with a manufacture which could be localized in certain industrial areas, a universal rate was practicable. Where, however, a Trade Board was set up for laundry work, or milk distribution, and there were workers in villages and small towns where the general rate of wages was much lower than in industrial areas, differentiation by area became the only just course to follow. The practice generally adopted in cases of this kind has been to grade areas by population, but occasionally the grading has depended on the class of business done. For example, in retail tailoring, a smallish town in a hunting district may do a better class trade, and have in consequence a higher rate, than a larger town in a purely industrial district.

As regards differentiation by process, the position was simplified by the refusal of the first Trade Boards to legislate for any other class of work than the lowest, and under the Act of 1909 a good deal could be said for this policy. The wider scope given under the Act of 1918 caused some Trade Boards to produce most complicated gradations of rate. For instance, the Coffin Furniture Trade Board, which on the men's side deals with a section of the brass trade, adopted the system of grading male workers in three classes which the Brassworkers' Society had adopted for its members. On the other hand, the Hollow-ware Trade Board was content with a minimum rate for unskilled male labour and the workers' side relied on Trade Union effort to secure higher rates for different classes of skilled labour.

Differences in age and experience were dealt with by Trade Boards under the general heading of learnership, and lower rates were universally fixed for different classes of learners. The problem of differentiation was attacked from two points of view. If the trade demands a long experience before full qualification is reached then a sum which is reasonable for an absolute novice is fixed and the sum payable to the fully qualified worker being already fixed, the scale for the years of learnership ascends by more or less regular increments from one limit to the other. If, on the other hand, age is of more importance than experience and a boy of nineteen with no experience is practically as good as a boy of nineteen with five years' experience, then a scale of payments is fixed according to age, and the ordinary minimum rate is reached at some fixed age, say, eighteen in the case of women and twenty-one in the case

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of men, irrespective of actual experience. In practical life the two points of view cannot be entirely separated and nearly all learnership schemes are a blend of two systems. It is quite possible, for instance, for girls of sixteen to learn a skilled trade in a smaller number of years than girls of fourteen. Even in unskilled occupations experience counts for a good deal, and a youth of nineteen without experience cannot compete against another of the same age with considerable experience. Learnership schemes in practice are of two types. In the first type the grading is mainly according to experience with certain allowances for age, and in the second type the grading is mainly by age with certain allowances for experience. The Act of 1918 enacted that where a Trade Board fixed a minimum rate for a special class of workers they might attach a condition that workers who are members of the class must be holders of certificates to that effect issued by the Trade Board. This was a perfectly general provision, but in actual practice certificates were mainly, and possibly only, issued to learners. This provision does not appear in the Wages Councils Act, 1945, and with the general powers given to Wages Councils its insertion was not necessary.

We may now turn to the other rates which a Trade Board might fix if the circumstances of the industry made it possible and advisable to do so. They constitute the actual rates with which Wages Councils have begun their operations. In the course of time Wages Councils with their greater freedom will try fresh experiments, e.g. the substitution of a guaranteed weekly minimum in place of an hourly minimum wage. The first of these actual rates is a general minimum rate of wages for piece work. In some industries a minimum rate for piece work is practically impossible, while in other industries, though the fixing of such a rate may offer no serious practical difficulties, yet for certain reasons it is inadvisable. A minimum piece rate cannot be fixed where the operation to be performed by the worker is not capable of being clearly and adequately defined in writing. The Tailoring Trade Board furnished several examples of this. One of the most important operations on a garment is "pressing", but the pressing of an expensive coat is one thing and the pressing of a cheaper coat is another. The rate paid for pressing a cheap coat may be much less than the rate paid for pressing the expensive coat, and yet the lower rate in the former process may yield the worker a higher rate of remuneration, because the work involved is so much less. *Now, the employer can fix a piece rate because he has a standard of pressing in his own mind and he can see that the worker works to that standard, but it is*

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practically impossible to express that standard in a written definition as a basis for a minimum rate. Button sewing is an operation of a similar character. The buttons on a "Kaffir suit" made for the South African market are but lightly attached to the garment, while those on an expensive ready-made overcoat for the New York market must be capable of standing a sustained strain and be well finished off. The amount of sewing required in these cases cannot be adequately expressed in writing. If standard samples could be deposited at the Wages Council Offices the difficulty might be got over, but the trade does not possess standard samples and each manufacturer has his own standard. In other industries operations are standardized, as for instance in chain making, where the size of the iron used and the process employed are the only two determining factors. In the lace finishing industry the operations of thread drawing, clipping, scalloping, carding, etc., require no complicated definition and though there may be great variations in the number of threads, the pattern of the lace, and the process of making, yet by grouping together operations involving practically an equal amount of work, it has been found possible to cover all operations by some twenty or thirty piece rates. When the question of the practicability of minimum piece rates has been settled the advisability of fixing such rates must be considered. The question may be summed up in two sentences. First, if any particular operation is almost wholly done by home workers, or is done by home workers under conditions which are not comparable with those of factory workers, then the only satisfactory protection for the home workers is a minimum piece rate. It is impossible to pay home workers at an hourly rate, and it is very difficult for them to keep such a record of time spent over work as will constitute a fair criterion of the hourly return of the employers' piece rate. If, however, home workers are paid the same piece rates as factory workers, and the conditions of work at home and in the factory are fairly comparable, then, as there is no serious difficulty in computing the hourly earnings of the factory workers, an employers' piece rate which is proved to be satisfactory for the factory workers will also be a satisfactory rate for the home workers. Secondly, where a particular operation is mainly a factory operation, then a minimum piece rate either tends to stereotype operations or soon becomes obsolete. A resourceful employer is always trying experiments in fresh methods of production. Suppose, for instance, that ten operations, each with a separate piece rate, are customary in the making of a particular article. The employer sees that by amalgamating operations 2 and 3, and by splitting up operation 7

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into two distinct operations he can make a saving in production and he proceeds to do so. If the ten operations are being done under minimum piece rates, he is no longer bound by rates 2 and 3, for he has introduced a new combined operation, nor is he bound by rate 7, because part of the operation is done by one worker and part by another. If another employer begins altering operations on his own account on different lines, still further complications ensue, and it will be practically impossible to fix piece rates for all employers for any length of time. It may be taken for granted that, in general, factory work which lends itself to the piece work system will be done under employers' piece rates and not under minimum piece rates, the exceptional cases being such operations as the making of chains by hand, and other possible cases of standardized methods of production. This at once raises the question of the position of a worker who is actually working on piece work terms on work for which a minimum time rate has been fixed but no minimum piece rate. The combined effect of the Trade Boards Act, 1909 and 1918, was to introduce "a basis rate" for such piece workers. Under those Acts an employer was deemed to be paying wages at less than the minimum rate unless he could show that his piece rate of wages would yield in the circumstances of the case to an ordinary worker at least the same amount of money as the basis rate. The term ordinary worker can wait for a moment until the nature of the basis rate has been explained. There was always a basis rate, because if the Trade Board was ignorant of the existence of piece workers, or had not had time to consider their special claims, or refused to recognize any special claim, then the basis rate was the general minimum time rate already fixed. As the Wages Councils Act, 1945, makes no specific provision for the case of workers on piece work terms, these workers will have no protection in the case of a new Wages Council unless they are definitely legislated for. Mere silence on the subject will not give them the minimum time rate as a basis rate. In general the minimum time rate was an inadequate protection for piece workers as the whole object of piece work is to stimulate production, and experience shows that a piece worker on the average produces from 25 per cent to 33 per cent more than a time worker in the same time. If, for instance, 8*d.* an hour is a reasonable rate for a female time worker on a particular job, we may presume that the employer will see that an ordinary worker produces eight pennyworth of work in an hour. The same worker put on to piece work with the added stimulus of that system will probably produce ten pennyworth of work in an hour, and if the time rate was left

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as the basis rate, the employer could fix his piece rate so that he was satisfying the law by paying 8d. for this ten pennyworth of work. For by so doing his piece rate was yielding the ordinary worker the same amount of money as the basis rate and that was his only obligation. For this reason the Act of 1918 gave a Trade Board power to fix a piece work basis time rate for the purpose of being substituted for the general minimum time rate as the basis rate. Since the Act of 1918 was passed practically all the Trade Boards for industries in which factory work is done on the piece work system have fixed piece work basis time rates substantially in advance of the general minimum time rates.

The term "ordinary worker" must now be discussed. No definition of this term is contained in the Trade Board Acts, and no authoritative interpretation of it has been given by a Court of Law. It is, however, almost certain that ordinary worker does not mean average worker; first, because that term could have been used and was not used and, secondly, because the process of calculating averages is really not relevant to the fixation of a minimum wage. It is no satisfaction to a worker who earns 20s. a week on piece work to be told that another worker is earning 50s. a week on the same work, and that this average rate of 35s. is satisfactory. Further, if the average worker or piece worker is to have the basis rate, the presumption is that a large proportion—possibly one-half—of the workers will have less than the average rate, and therefore less than the basis rate. The true interpretation is most probably arrived at by considering the practical difference to an employer who puts his workers on a piece rate instead of a time rate. An employer who is bound to pay his time workers, say, not less than 8d. per hour, will take care not to engage or retain as time workers those who are not worth 8d. an hour, and if the rate is a reasonable rate a supply of labour of ordinary capacity will be available at that figure. The lazy and unskilful who are inadvertently engaged will be weeded out. Suppose, however, the employer engages a group of workers to undertake piece work. Under the stimulus of piece work the bulk of them will earn more than 8d. per hour, and if the Trade Board has fixed 9d. or 10d. as the basis rate we may expect the greater number to attain those hourly amounts, while some may earn very much more. There are sure to be some slow and some indifferent workers in the group of the type which under a time rate would be dismissed. As, however, the employer is paying by results the presence of a few of these workers does no great harm. The actual work done by these workers is paid for by the employer at the same rate as he pays

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for the product of the fast and the ordinary workers. If his overhead charges are very heavy then a slow worker may mean a loss to him in other ways, but if there is plenty of room in the factory and the slow workers are not using very expensive machines, the use of which can only be justified by rapid production, and if they do not tend to lower the whole efficiency of the shop, then there is no particular reason why a slow piece worker should be dismissed. Experience shows that piece workers are not weeded out with the same rigour as time workers are. Hence a group of piece workers will generally consist of a few really fast workers, a considerably larger proportion of workers of ordinary capacity, between whose rate of working there is some difference but not a great deal of difference, and then a few definitely slow workers. These last may be called sub-ordinary workers. Every worker is to be deemed an ordinary worker who is of ordinary capacity and has a reasonable prospect of engagement either as a time worker or a piece worker. Workers who only owe their retention in the trade to the fact that they are paid by results may be deemed to be sub-ordinary. The question may be asked whether any rule can be laid down as to the usual proportion of sub-ordinary workers in piece work groups. Mr. Edward Cadbury once expressed the opinion, based on his own experience, that 90 per cent of workers are ordinary workers and only 5 per cent are exceptionally fast and only 5 per cent exceptionally slow. But at Messrs. Cadbury's works a fairly stringent sorting out process is in operation, and various tests of intelligence have to be satisfied before engagement. Two of the early Trade Boards—namely, the Paper Box Board and the Wholesale Tailoring Board—adopted rule of thumb tests for administrative purposes and the Paper Box Board decided that any piece rate which failed to yield the basis rate to at least 85 per cent of the workers should be deemed not to be yielding the basis rate to the ordinary worker, while the Tailoring Board fixed its figure at 80 per cent. To sum up, the Trade Boards Acts secure the basis rate for all ordinary workers on piece work, but in the term "ordinary worker" there is almost certainly a recognition of the fact of the existence of a small but undefined proportion of slow or sub-ordinary workers. The Act of 1918 implicitly recognized the correctness of this interpretation of "ordinary worker" by introducing a special but optional protection for the sub-ordinary class in the shape of "a guaranteed time rate". This is defined by the Act as a minimum time rate (which shall not be higher than the general minimum time rate) to apply in the case of workers employed on piece work for the purpose of securing to such workers

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a minimum rate of remuneration on a time work basis. Thus it was possible for a Trade Board to begin by fixing a general minimum time rate of 8*d.* an hour for time workers, and then to proceed to fix a piece work basis rate securing to the ordinary piece worker 10*d.* an hour, and then finally to secure theoretically for all piece workers, but practically for sub-ordinary piece workers, a guaranteed time rate of 7*d.* an hour, to which their actual piece work earnings must be raised.

In the course of this discussion of the piece worker's position we have incidentally disposed of all the rates possible under the Acts except a special minimum piece rate and an overtime rate. The former is a piece rate, or a series of piece rates, fixed for an individual employer who applies to the Trade Board to fix piece rates for his class of work on the ground that there is only a general minimum time rate or a piece work basis time rate applicable. He could insist on the Trade Board shouldering the responsibility of fixing proper rates for his particular classes of piece work. At the first blush it might be thought that having regard to the uncertainty of the term "ordinary worker", employers would frequently resort to the Trade Board for the determination of these special minimum piece rates, but as a matter of fact these applications were very rare. The reason for this seems to be that the applicant had to disclose to a local committee of the Trade Board in detail the working of his factory, and that he did not like other employers in his own trade and locality to have the opportunity of acquiring this knowledge.

As a Wages Council has power to fix the remuneration to be paid for "any particular work", it can apparently fix a general piece rate, or a special minimum piece rate in the same way as Trade Boards did.

The Act of 1918 defines the overtime rate as a minimum rate to apply, in substitution for the minimum rate which would otherwise be applicable, in respect of hours worked by a worker in any week, or on any day in excess of the number of hours declared by the Trade Board to be the normal number of hours of work per week or for that day in the trade. Nearly all Boards used their powers. No Board fixed a normal week in excess of forty-eight hours, while the Boards dealing with metal trades fixed a forty-seven hour week in recognition of the existing practice of those trades. The Trade Boards followed trade customs fairly closely giving, for instance, time and a quarter for ordinary evening overtime and double time for Sundays and holidays. There are naturally certain variations on minor details, and particularly as to the length of

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the working day as distinct from the working week. In form an overtime rate is a special wage rate, but in substance it is a means of checking long hours of work, and in that aspect comes under the second part of this section.

In the discussion of the practical application of time rate and piece rate payments in the case of a slow worker it was assumed that a slow worker on a time rate who was below the ordinary capacity would be dismissed by the employer if he was compelled to pay such worker the full Trade Board *minimum time rate*. If the worker is young and able in body and mind, dismissal from work for which the worker is obviously unsuitable may be a disguised blessing and may result in the transference of the worker to an industry at which better work can be done. If the worker's slowness is due to age, or physical or mental infirmity, then no mere change of occupation can be a cure, and dismissal may be a real hardship. The Act of 1909 provided for these cases by allowing the Trade Board to grant exceptions or permits to individual applicants. The Act of 1918 introduced some slight modifications. The Wages Councils Act, 1945, expressly legislates for these persons in the following terms: "If, as respects any worker employed or desiring to be employed in such circumstances that a wages regulation order applies or will apply to him, the Wages Council is satisfied on application being made to it for a permit either by the worker or the employer, or a prospective employer, that the worker is affected by infirmity or physical incapacity which renders him incapable of earning the statutory minimum remuneration, it may if it thinks fit, grant subject to such conditions, if any, as it may determine, a permit authorizing his employment at less than the statutory minimum remuneration, and while the permit is in force the remuneration authorized to be paid to him by the permit shall, if those conditions are complied with, be deemed to be the statutory minimum remuneration." Under Trade Board practice these conditions generally took the form of a special wage payment for the worker, which was of course lower than the minimum time rate, but which was sometimes a weekly wage instead of an hourly wage, so that the wage, though comparatively small, was independent of casual illness. If the Trade Board was satisfied that the employment of a particular worker was not a business proposition, but really a piece of charity on the employer's part, it was usual to make the permit unconditional, but in all other cases a real effort was made to assess the value of the worker and to make the conditions just for both the employer and the worker. Trade Boards took a good deal of trouble over their permits and proceeded only

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on medical evidence and the report of an investigating officer. It was usual also to grant permits for fixed periods, say six or twelve months, so that circumstances can be reviewed from time to time.

The number of permits in force at the end of 1934 was 2,890, and the largest numbers in any one trade were 350 in the milk trade, 308 in the boot and shoe repairing trade, and 297 in laundries.

In 1938 Trade Boards were given power by the Holidays with Pay Act, 1938, to fix a compulsory holiday period not exceeding one week per annum and to fix a wage for such period. This power was very widely used. The Wages Councils Act, 1945, goes much further. A Wages Council may submit proposals for requiring workers to be allowed holidays by their employers, and may propose the remuneration to be paid for such holidays. The extent of the holiday period or periods is left to the discretion of the Wages Council. These new powers are being exercised sometimes by extending the annual holiday beyond a week, and sometimes by the recognition of customary holidays and the granting of pay for them. It will be borne in mind that the six days' holiday in the year given under the provisions of the Factory Acts has only been given to women and young persons, and leaves men in general unprovided for except by custom, or negotiation, or this new enactment. Certain governing principles are laid down for the exercise by a Wages Council of these powers, as follows: (a) a worker cannot be granted holiday remuneration unless the Wage Council has already fixed or is fixing minimum remuneration for him; (b) the duration of the holiday must be related to the duration of the period of employment of the worker. The Wages Council may fix times for the holiday, and for the date of payment of the holiday remuneration, and for payment to a worker who leaves the employment before he has drawn his complete holiday pay, of what has accrued to his credit.

The procedure for fixing or varying a rate of remuneration by a Wages Council follows closely but not entirely the Trade Board procedure. One variation is that a Wages Council is specifically required to make such investigations as it thinks fit before submitting proposals to the Minister. In the case of a new proposal it is quite likely that investigations may be substantial, and may require the assistance of the inspectorate, but where the question to be discussed is the variation of an existing rate the Council will often rely on the trade knowledge of the representative members.

Subject to this requirement the Wages Councils will hold a meeting for the purpose of considering a proposal or proposals.

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Discussion may reveal that the two sides are agreed, and then the proposal, which is probably more or less informal, is drafted in a form in which it can be circulated in the trade, and a formal resolution is carried approving the draft proposal, which is identified by the chairman writing his initials on it. If the draft is complicated, after all the essential terms are worked out, the actual wording may at this stage be left to the Secretary of the Board. If the two sides are at variance, then the appointed members take up their task as conciliators and try to bring the parties to agreement. If they succeed, then once more there is an agreed proposal. If they fail to get an agreed proposal, then the appointed members are driven, in substance if not in form, to make a proposal of their own. They cannot, however, carry any proposal without the support of one or other of the sides, but they can announce the kind of proposal for which they will vote. As the workers' side never have anything to gain from a deadlock at any rate when a rate is being fixed and not merely varied, they can generally be induced as a last resort, and with any protestations they think advisable, to propose what they know can be carried by the vote of the appointed members. Sometimes the employers feel that a concession on their part will be prudent, and they accept the suggestions of the appointed members. But in every case the proposal must be carried by a majority, and it then becomes the proposal of the Wages Council as a whole. The next step is for the Council to give notice of the rate which they propose to fix, or of their proposal to cancel or vary an existing rate, and they must consider any written representations¹ as to the proposal which may be lodged with them.

The period allowed by the Trade Boards Act during which objections might be made has been altered. Instead of a fixed period of two months it now rests with the Wages Council to determine the period for the lodging of representations, subject to a minimum of 21 days. If a Trade Board had established District Trade Committees these Committees had to be convened and an opportunity given to them to report their views on the proposal to the Trade Board and the Trade Board had to consider any such report. These duties have been suspended under emergency legislation. New Wages Councils are not allowed to appoint District Committees and the existing District Committees only continue to exist until the Minister otherwise directs, so that the conclusion may be drawn that District Committees are approaching extinction,

¹ This word has replaced the word "objections" which was used in the case of Trade Boards.

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and are not likely to have a voice in the making of wage proposals.

When the Wages Council meets again to fix or vary a rate according to its proposal it must take into consideration the representations which have been received. If the proposal was an agreed proposal, the probability is that there will be few or no representations, but such representations as come to hand will be spontaneous or unorganized, for the official organizations of the two sides of the Council will be precluded from going back on their bargain.¹ If the proposal was carried by the vote of the appointed members, then the defeated side on the Council may, and very likely will, organize the lodging of representations, which will tend to be in a stereotyped form. The original proposal of the Wholesale Tailoring Trade Board as to women's rates met with two or three hundred objections. The original proposal of the Laundry Board provoked about eight hundred objections. It is a matter of some importance that Wages Councils should feel themselves free to treat a proposal to fix as a proposal and nothing more, and should be willing, on a case for alteration being made out, to modify it. In Mr. Tawney's book on the Minimum Wage in the Tailoring Industry a long account is given of the precedent in this respect created by the Tailoring Trade Board. The original proposal was for $3\frac{1}{2}d.$ per hour. At the first stage the two sides could not be got nearer than an offer of $2\frac{3}{4}d.$ from the employers and an offer of $4d.$ from the workers. When the appointed members threw out the suggestion of $3\frac{1}{2}d.$ the employers moved up to $3d.$ and the workers came down to $3\frac{1}{4}d.$ As one of the appointed members concerned, the writer may perhaps be pardoned for expressing his personal view. In controversies of this kind there is not a hard and fast line to be toed. So when the workers at last came down to $3\frac{1}{2}d.$ the appointed members voted for that, but by so doing did not commit themselves to $3\frac{1}{2}d.$ as the only reasonable rate. It was probably the highest rate that was reasonable, but as the employers were in a mood to obstruct any rate above $3d.$ a lower rate would have been met with just as much opposition from the employers and would have been less acceptable to the workers. At the proposal stage the appointed members could secure no compensating advantage to the workers by giving the preference to a $3\frac{1}{4}d.$ over a $3\frac{1}{2}d.$ rate. When the Trade Board met to consider the objections, it was evident that there was a very solid opposition amongst employers to the $3\frac{1}{2}d.$ rate, but, what was far more important, the employers were now

¹ If no representations have come in there need not be a confirming meeting (see p. 53 *ante*).

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prepared to accept 3½d. and to make smooth its path. In practice a 3½d. rate, coupled with the goodwill of the employers, might be as valuable to the workers as a 3½d. rate imposed on the employers against their will and evaded and obstructed by them at every turn. The appointed members, by then accepting 3½d., were securing for the workers some very real advantages, and they therefore agreed to a new proposal at that figure and this went through without any serious difficulties. In most cases, however, the original proposal is confirmed with or without minor alterations not involving a new proposal.¹ The next step is for the Wages Council to notify the Minister of Labour of the minimum rate of wages fixed by them. As soon as the Minister receives this notification he must forthwith take the matter into his consideration and unless he thinks it necessary to refer the matter back to the Wages Council for reconsideration, he must as soon as may be make an order confirming the rate. Unless there are special circumstances, he normally makes the order within one month from the date on which the notification from the Wages Council is received. The Minister of Labour then at once lets the Wages Council know that the rate has been confirmed and the Wages Council gives notice to all persons concerned in the manner prescribed by regulations. These regulations must include provisions for fixing notices of rates in factories, workshops, and any place used for giving out work to outworkers.

The rate becomes effective as from the date specified in the Order by which it is confirmed, and the date must be one subsequent to the date of the confirming Order. From such date an employer must pay wages to a worker at not less than the minimum rate, clear of all deductions except such as are specifically allowed, and if he fails to do so he is liable on summary convictions in respect of each offence to a fine not exceeding £20. On the conviction of the employer the Court may also order him to pay, in addition to the fine, such sum as appears to the Court to be due to the person employed on account of wages calculated on the basis of the minimum rate.² The worker may also recover arrears of wages by ordinary civil proceedings. Agreements for the payment of wages in contravention of these provisions are void.

If a Wages Council is silent as to the duration of a rate fixed by

¹ The Wages Councils Act, 1945, besides making it the duty of the Wages Council to consider any written representations made to it, directs it to make such further inquiries as it considers necessary.

² Contraventions on the part of the employer in respect of any period during the two years immediately preceding the date of the offence may be proved, and taken into account in calculating the wages due.

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it, then such rate, on becoming effective, remains effective until it is cancelled or varied. A Wages Council can, if it pleases, fix a series of minimum rates to come into operation successively on the expiration of specified periods or on the happening of an event such as a specified change in the official cost of living figures. When it is varying an existing rate it may vary the rate for a specified period.

To complete the statement of the position of Wages Councils in regard to the fixing of wages it is necessary to gather together certain miscellaneous provisions. The most important of these relate to deductions. The Trade Boards Acts, 1909 to 1918, contained various provisions, but did not include anything on the lines of the Agricultural Wages (Regulation) Act, 1924, which on certain conditions allowed benefits or advantages given by the employer to be reckoned as payment of wages in lieu of cash, at a value which was computed by the wage fixing body. These precedents are followed in section 13 of the Wages Councils Act, 1945, which deals with computation of remuneration. Under that section remuneration means the amount obtainable in cash by the worker from his employer after allowing for the worker's necessary expenditure¹ (if any) in connection with his employment and clear of all deductions in respect of any matter whatsoever, except any deduction lawfully made (a) under the Income Tax Acts, the Unemployment Insurance Acts, 1935 to 1944, the National Insurance Acts, 1936 to 1941,² or any enactment authorizing deductions to be made for a superannuation scheme; (b) at the request in writing of the worker, either for a superannuation scheme or a thrift scheme or for any purpose in the carrying out of which the employer has no beneficial financial interest whether directly or indirectly; or (c) in pursuance of a contract under sections (11), (21), and (31) of the Truck Act, 1896, and in accordance with the provisions of that Act.

Again, wages regulation proposals and orders may contain provisions authorizing specified benefits or advantages to be reckoned as payment of wages by the employer in lieu of payment of cash, and defining the value at which any such benefits or advantages are to be reckoned. Only benefits and advantages provided in pursuance of the terms and conditions of the employment of workers by the employer, or some other person under

¹ In some trades workers have to use material, such as sewing cotton, etc., which they either supply themselves or which they obtain from their employers at a reasonable price.

² When the National Insurance Act, 1946, and the National Insurance (Industrial Injuries) Act, 1946, come into operation, they will be substituted for the two last mentioned groups of acts.

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arrangements with the employer, and not being benefits or advantages the provision of which is illegal by virtue of the Truck Acts, 1831 to 1940, come within this enactment. If any payment is made by a worker in respect of any such benefit or advantage, he is to be given the benefit of his payment.

A practical point which concerns piece workers is that of time spent at the factory in waiting for jobs. Section 8 of the Act of 1918 provided that for the purpose of calculating the amount of wages payable under the Acts the worker should be deemed to have been employed during all the time during which he was present on the premises of the employer, unless the employer proved that he was so present without the employer's consent, express or implied, or that he was so present for some purpose unconnected with his work and other than that of waiting for work to be given to him to perform. In the case of piece workers, the time lost in waiting for work to come along may be quite considerable. In one instance the writer was told by an employer, whose workers were on a piece work basis rate, that he calculated his piece rates on the basis of 37 hours of actual work per week out of a possible 47 hours. The Wages Councils Act, 1945, makes no specific provision for dealing with "waiting time", so this is a matter in which each Wages Council can make such proposals as it thinks fit. Another practical point is to facilitate the work of the Inspectorate. A special provision under the Wages Councils Act, 1945, requires the employer of any workers to whom a wages regulation order applies to keep such records as are necessary to show whether or not the provisions of the Act are being complied with as respects them, and the records must be retained by the employer *for three years*.

There is one entirely new provision of the Wages Councils Act, 1945, which must be mentioned and that is the power given to the Minister to establish by order a central co-ordinating Committee in relation to any two or more Wages Councils. After establishment he has power to abolish the Committee or vary its field of operation. It is constituted on the same lines as a Wages Council. Where a Commission of inquiry has made a Wages Council recommendation (see p. 49 *supra*) it may add a recommendation for the establishment in relation to the contemplated Wages Council and any other Wages Council of a central co-ordinating Committee, or for bringing such contemplated Wages Council under some existing co-ordinating Committee, and the Minister may make an order giving effect to the recommendation.

The functions of a central co-ordinating Committee are (a) to

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consider whether the field of operation of the Wages Councils in relation to which it is established is properly divided as between those Councils, and to report on that to the Minister ; (b) to make recommendations to those Councils with respect to the principles to be followed by them in the exercise of their powers ; and (c) to consider any question referred to it by the Minister or by the Councils concerned and to report to the Minister or the Councils as the case may be. Lastly, when a Wages Council which is one of a group for which a co-ordinating Committee has been set up submits its wages regulation proposals to the Minister, it must at the same time send a copy to the co-ordinating Committee, and the Minister must take into consideration any observations made to him by that Committee within 14 days.

We now pass to a consideration of the operation of the Coal Mines (Minimum Wage) Act, 1912, which will not need lengthy notice. The first point of difference to be noted is that no penalties are imposed for a breach of the Act, and that the only remedy of an aggrieved worker is to take proceedings in the Civil Courts for recovery of the minimum wage. The Act enacts that it is to be an implied term in every contract for the employment of a workman underground in a coal mine that the employer shall pay to the workman wages at not less than the minimum rate to be settled under the Act, and applicable to that workman, unless excluded from its scope by (a) old age or infirmity or (b) non-compliance with the conditions regarding regularity and efficiency of work.

The exclusions constitute the second important point of difference. The exclusions for old age and infirmity are, of course, on the lines of the permits given under the Trade Boards Acts, but apparently individual cases were not dealt with in the detailed and painstaking way which the Trade Boards have adopted. The exclusion for non-compliance with conditions binding on the worker was entirely new in principle. It is not easy to get information as to the practical utility of the Act under present conditions in the coal mining industry, but the following extract from an account of the original working of the Act which appeared in the *Economic Journal* for September, 1912, pp. 385-6, is still of considerable value and interest : " The work of the Boards has varied greatly in complexity ; thus in Northumberland the only divisions are into men and boys, piece workers and day workers, while in Cumberland twenty-four, and in South-Wales thirty-six classes of workers are separately provided for. The district rules are in many cases very stringent ; thus in Northumberland piece workers over fifty-seven years of age are excluded from the Act and one

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day's absence without excuse forfeits the right to the minimum for a whole fortnight. In Durham, Cumberland, Leicester, and elsewhere the minimum is not paid if not earned at the current piece rates, unless the workman can prove that the cause was one over which he had no control. In Lancashire a workman presenting himself at the pit bottom and finding his services not required is not entitled to the minimum, and in most districts, if he is prevented from working more than part of a shift, only a corresponding proportion of the minimum is payable. Other provisions prescribe forfeiture in case of breach of colliery rules, disobedience to officials, delay in starting work, etc. In most cases provisions are made for the settlement of disputes by joint committees, generally with an outside chairman with final powers."

Rates under the Act can be varied from time to time, and provision is inserted for the stability of a rate for a fixed period unless all parties consent to an earlier variation. The minimum period for which a rate stands, unless altered by consent, is one year and there must also be a notice or proposal period of three months. Either the masters' side or the men's side can raise the question of variation, and the whole side need not act together, but the demand must come from a group representing a considerable body of opinion.

The scheme of the Agricultural Wages (Regulation) Act, 1924, was as follows. Agricultural Wages County Committees must fix minimum rates of wages for workers employed in agriculture for time work, and might also, if thought necessary or expedient, fix minimum rates of wages for workers employed in agriculture for piece work. The fullest powers of differentiation by area or class, or on account of the special character of any employment were given. Rates might also vary according as employment was for a day, week, month, or other period, or according to the number of working hours, or the conditions of the employment, or so as to provide a differential rate in case of overtime. These Committees were directed in the exercise of these powers to secure, so far as was reasonably practicable, a weekly half-holiday for workers. Another direction was that they should secure, so far as was practicable, such wages for able-bodied men as in the opinion of the Committee were adequate to promote efficiency and to enable a man in an ordinary case to maintain himself and his family with such standard of comfort as may be reasonable in relation to the nature of his occupation. There were the usual powers of cancelling and varying rates. The proposal period was "not less than fourteen days".

A rate when fixed had to be notified to the Agricultural Wages

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Board, and the Board, as soon as practicable, had to make such order as may be necessary for the purpose of carrying out the decision of the County Committee. The rate became effective from the date specified in the order.

Permits might be granted to injured, mentally deficient, or infirm workers. A piece worker, where no piece rates have been fixed, was protected by being given power to complain to his County Committee that the piece rate paid to him was less remunerative than the appropriate minimum time rate. The Committee might, after giving the employer an opportunity of making such representations as he thought desirable, direct the employer to make up the wages to the time rate earnings.

The Agricultural Wages Board might themselves fix rates if a Committee failed to fix a rate within a given time, or failed to fix a new rate when an old one ceased to operate, or when the representative members of the Committee requested the Board to fix a rate.

The Minister of Agriculture and Fisheries might direct a Committee to reconsider any rate fixed by them, and to notify to him the result of their reconsideration.

Failure to pay a minimum rate after it has been made effective is an offence punishable by fine, and the Court of summary jurisdiction which hears the case can make an order for the payment of arrears over a period of six months, or if proper notice has been given, over a period of two years, preceding the date of the complaint.

Lastly the Minister had power to make regulations under which County Committees might be required to define benefits or advantages to be reckoned as payment of wages in lieu of cash, and the value at which they were to be reckoned. It was this provision that has been followed in the Wages Councils Act, 1945.

The scheme of the Agricultural Wages (Regulation) Act, 1924, has been varied in a very important way by the Agricultural Wages (Regulation) Amendment Act, 1940. Under the principal Act the initiative in fixing wages was given to the County Committees. There were at that time considerable divergences in the wages paid in different parts of the country, the dominant factor being the nearness of industrial districts which offered alternative and better paid employment. Organization amongst agricultural labourers was backward, and the feasibility of anything in the nature of a national minimum wage was not apparent. In the first year of the recent war conditions had greatly altered, and the amending Act was passed with this title: "An Act to provide for the fixing of a national wage for men employed in agriculture by

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the week or longer, and for the duties of wage Committees in connection therewith." This leaves to the County Committees the fixing of rates for non-adult males, for women, for persons employed by the day, for piece work, and other possible classes, and the granting of permits.

The Act makes it the duty of the Agricultural Wages Board, after consultation with the County Committees, and after considering the general economic condition and the condition of the agricultural industry, to fix a national minimum wage for full-time adult male workers. It is, however, possible for a County Committee to plead special conditions in its county which make a case for a lower minimum wage and the Wages Board has power to fix a lower wage for that county. When a national minimum wage has been established the County Committees must conform to it, and it becomes a kind of starting point for their other rates, as they are bound to have regard to it in fixing such rates. For this purpose County Committees must within a prescribed period after notification that the National Minimum wage has been fixed or altered, reconsider their minimum rates of wages, and must notify to the Board the variations they have made, and the Board can act in the place of any County Committee which is in default. As this book is passing through the press the Agricultural Wages (Regulation) Act, 1947, has been enacted by Parliament. This makes the County Committees little more than consultative bodies. They will, however, continue to deal with applications for permits of exemption. All other powers of the County Committees are transferred to the Wages Board. Existing restrictions in the Holidays with Pay Act, 1938, which prevent the granting under that Act of holidays to agricultural workers of more than a week a year or more than three consecutive days, are removed. Further the definition of "agriculture" is extended to include the use of garden land under certain circumstances.

We now pass to the working of the Road Haulage Wages Act, 1938. This Act contains not merely provisions for setting up a central Wages Board for certain classes of workers on well established principles, but also provisions of a new character under which the Industrial Court can fix a statutory remuneration for an individual worker in another class, or for a class of workers employed by an individual employer. The constitution of the Central Wages Board, and the area Boards for which the Act makes provision will be found on p. 45 *supra*. The work to which the Act applies is road haulage work in connection with any goods vehicle for which an A, B, or C licence is required under the Road and Rail Traffic Act,

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1933. That Act enacts that licences shall be of the following classes : (a) public carriers' licences ; (b) limited carriers' licences ; and (c) private carriers' licences. Detailed explanations of those terms are contained in the Act but are not repeated in the Road Haulage Wages Act, 1938. That Act empowers the Central Wages Board to regulate the remuneration of workers employed by public carriers and limited carriers and empowers the Industrial Court to fix statutory remuneration for workers employed by private carriers.

The persons employed on road haulage work are the drivers and attendants of the vehicle, and those who collect, load, deliver, or attend to the goods which are carried provided that they are required to travel on or accompany the vehicle for the purpose of their work. There is an exception where the travelling on the vehicle has for its main purpose some work other than road haulage work, e.g. selling the goods.

The time of the actual journey, waiting time, and time during which he is at the disposal of his employer or doing incidental work, are covered by the Act as well as the time spent on the specified operations.

The principal function of the Central Wages Board is to submit to the Minister proposals for fixing the remuneration (including holiday remuneration) of the workers on road haulage work employed by public carriers and limited carriers holding either A or B licences.

When the Central Board has drafted its proposals, it must send them to the Area Boards, who must consider them, and report to the Central Board within twenty-eight days, a period reduced by emergency legislation to twenty-one days. In the light of these reports the Central Board may amend its proposals. Notice of the proposals as finally drafted must be given by the Central Board to all persons affected thereby, and a period of not less than twenty-one days must be allowed for the receipt of written objections. An obligation to send copies of objections to the Area Board concerned for consideration and report is inoperative under emergency legislation. Finally the Central Board submits its proposals to the Minister and he makes the order for giving effect to it as stated on p. 46. The Central Board gives notice of the order to all persons affected by it. All this closely follows the precedents set up in the case of Trade Boards.

We now come to the provisions in the case of road haulage workers employed by private carriers holding a " C licence ". If such workers' remuneration is considered to be unfair, application for the matter to be referred for settlement can be made to the Minister by the worker, or by his trade union, or by a trade union

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representing, in the opinion of the Minister, a substantial number of road haulage workers. The application must be in writing, and must be signed by the person making it, and must contain certain particulars. If such an application is not frivolous or vexatious, and is not withdrawn after the Minister has made representations to the employer, the Minister must refer the matter to the Industrial Court for settlement. Normally this reference must be made within a month from the date of application. Where, however, there is in existence adequate joint machinery for settling disputes by conciliation or arbitration and the employer concerned is a member of an organization which is a party to such joint machinery, then the case must first be referred to that machinery for settlement. After a failure to obtain a settlement by that means the Minister if requested so to do so by both parties can refer the application to the Industrial Court. Remuneration cannot be deemed to be unfair if it is (a) equivalent to that which would have been payable under any road haulage wages order, if the work had been in connection with an A or B licence and not a C licence ; or (b) in accordance with an agreement in force between a trade union and the employer concerned, or an employers' organization of which the employer is a member ; or (c) equivalent to the remuneration payable for corresponding work by other employers in the district engaged in the same trade or industry under an agreement between a trade union and an organization of employers which represents a substantial number of employers in the trade or industry ; or (d) equivalent to the remuneration, payable for corresponding work by employers in the district engaged in the same trade or industry under a decision of a Joint Industrial Council, conciliation Board, or similar body, or (e) equivalent to the remuneration payable for corresponding work by an employer in the district in the same trade or industry under a decision given by the Industrial Court.

If in any case referred to it the Industrial Court finds that the remuneration paid was unfair, it is the duty of the Court to fix the remuneration to be paid, and such remuneration becomes and is called statutory remuneration. The Industrial Court has also power to fix holiday remuneration and to require this to be paid to the worker in addition to remuneration payable to the worker for the road haulage work done by him.

In determining cases before it the Industrial Court must pay regard to the provisions as to what constitutes fair remuneration as set out above, and also to any collective agreements brought to its notice concerning the remuneration of similar workers in comparable trades or industries, and to the general level of remuneration

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of other classes of workers in the trade or industry to which the reference relates. The award of the Industrial Court is to be given in such detail, as to the nature of the work to be done, the time to be spent on it, and the overtime provisions, and other relevant matters, as will enable the remuneration payable to the worker to be ascertained. The Court can make its decision retrospective for a period not exceeding six months.

Statutory remuneration applies to all other workers employed by that employer on the same work. It remains in force (subject to review) for a period of three years from the beginning of the week following the date of the Court's decision. Applications for review may be made at intervals of not less than three months.

There are certain general provisions with regard to statutory remuneration, however, arrived at.

First the failure by an employer to pay the statutory remuneration is an offence punishable by fine, and by recovery of arrears as in legislation as to Trade Boards, but with this possible additional liability, namely, the revocation or suspension of the carriers' licence under the Road and Rail Traffic Act, 1933.

In the next place there are provisions as to keeping records and posting notices, and the obligation to pay remuneration in full, clear of all deductions, except those specifically authorized, and these follow precedents set up in the case of Trade Boards. Finally persons working under certain kinds of arrangements are deemed to be employed; provisions are made for cases of mixed employment, and the Minister is given power to appoint an Inspectorate.

Finally, the scheme of the Catering Wages Act, 1943, must be dealt with. The workers to whom the Act applies are all persons employed in any undertakings, or any part of an undertaking which consists wholly or mainly in the carrying on (whether for profit or not) of one or more of the following activities, i.e. the supply of food or drink for immediate consumption, the provision of living accommodation for guests or lodgers or for persons employed in the undertaking, and any other activity as far as it is incidental or ancillary to any such activity of the undertaking.

The Catering Wages Commission (see p. 47 *supra*) has in five cases made a Wages Board recommendation, and the Minister acting on them has set up five Wages Boards. By this procedure the problems of licensed and non-licensed premises, of residential and non-residential establishments, can be tackled by separate Wages Boards. The membership of a Wages Board follows the precedents set up in the case of Trade Boards.

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Any Wages Board may request the Minister to appoint a Committee for any of the workers in relation to whom the Board operates, and the Minister must then appoint such a Committee with an independent person as chairman, and equal numbers of members representing respectively employers and workers. The Board may refer to such a Committee for a report and recommendation any matter relating to those workers which the Board thinks it expedient so to refer.

Any Board besides having power to make wages regulations proposals, may consider any matter affecting the remuneration, conditions of employment, health or welfare of all or any of the workers in relation to whom the Board operates, or affecting the general improvement and development of its part of the industry and may submit a report thereon. Such a report must be transmitted by the Board to the Commission who must consider it, and in their turn transmit it to the Government department concerned with their own observations on it. The Commission when considering such a report must consult any other Wages Board, or Joint Industrial Council, or the like, taking the place of a Board which they think ought to be consulted.

The main power given to a Board is the submission to the Minister of proposals (a) for fixing the remuneration to be paid, either generally or for any particular work, by their employers to all or any of the workers in relation to whom the Board operates ; (b) for fixing the intervals for meals or rest to be allowed to such workers ; (c) for requiring all or any of such workers to be allowed holidays. The Board may submit proposals for fixing holiday remuneration. The conditions attached to this latter power are the same as given for Wages Councils. The method of making a wages proposal is also the same as in the case of a Wages Council except that there is no provision for eliminating the confirming meeting of the Board if no written representations are received.

The provisions as to penalties, recovery of arrears for periods up to two years, allowable deductions, the provision of benefits by the employer at a value defined by the wages regulation order, the keeping of records, and the posting of notices are in much the same wording as the similar provisions of the Wages Councils Act, 1945. As regards records they are to be retained by the employer for "two years or such longer period as may be prescribed" as against a definite period of three years in the Wages Council Act. The provision for an Inspectorate also is expressed in much the same terms as in the Wages Council Act, with such variation only as the somewhat different powers of the Catering Boards makes necessary.

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This is a convenient place to notice certain powers of Trade Boards which went beyond the mere fixing of wages, and which more nearly resemble the powers possessed by Industrial Councils set up on the lines recommended in the Report of the Whitley Commission. The germ of this policy is found in section 3 of the Trade Boards Act, 1909, which placed on a Trade Board the duty of considering, as occasion required, any matter referred to them by a Secretary of State, the Board of Trade, or any other Government department, with reference to the industrial conditions of the trade, and of making a report on the matter to the department by whom the question had been referred. It will be noticed that under this section the initiative was with the Government departments and that it was possible for them to ignore the existence of a Trade Board in any particular trade. Under section 10 of the Trade Boards Act, 1918, the initiative was given to the Trade Boards, and a Trade Board for any trade might, if it thought it expedient so to do, make a recommendation to any Government department with reference to the industrial conditions of the Trade, and the department to whom the recommendation was made must forthwith take it into consideration. The result of raising the status of the Trade Boards was that section 3 of the Act of 1909 was more utilized. For instance, the Home Office consulted the appropriate Trade Boards before making Welfare Orders for any industry. A rather interesting example of Trade Board initiative came under the writer's notice. In the chain trade work is done under conditions which tend to facilitate bad timekeeping, and it was found that the restrictions on the hours for the opening of licensed premises which were adopted during the 1914-18 war very much improved the hours worked in this trade. The Chain Trade Board, on a motion proposed from the workers' side, passed a resolution in favour of the continuance of restricted hours and forwarded it to the appropriate Government department for consideration.

The Wages Councils Act, 1945, combines these separate provisions of the Trade Boards Acts, 1909 to 1918, in section 7 (2) of the Act. The rather more elaborate provision under which Catering Wages Boards and the Catering Commission can act on these lines have already been stated.

In the last chapter attention was called to a new departure in statutory wage fixing made by the Cotton Manufacturing Industry (Temporary Provisions) Act, 1934. The first point to note is that this Act does not set up a fresh wage-fixing machinery, but aims at giving statutory effect to the collective bargain made between

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the Trade Unions of the Employers and the operatives in the industry.

When an organization of employers and an organization of employed persons in the cotton manufacturing industry have reached agreement they are enabled by the Act to make a joint application to the Minister of Labour asking him to make a statutory order. The Minister on receiving the application must appoint a Board to consider and report on the application, unless he is satisfied that the organizations do not represent a majority of looms, or a majority of persons in the affected grades of labour. The Board consists of three neutral persons, appointed by the Minister from outside the industry, and one of these is the chairman. Each party may appoint six assessors to sit with these three persons. The Board is not to recommend the making of an order unless it is unanimous. If this condition is satisfied the Minister may make an order setting out rates of wages, conditions of earning, methods of calculation, etc., as contained in the agreement. There is no power to modify the agreement.¹ The rates fixed by the Order become terms of the contract of every employed person, and to pay less than the appropriate wage is an offence punishable by a fine. *It is the duty of an employer to keep such records as will show compliance with the order.*

A most important point is that either party to the agreement can bring about a revocation of the order by sending a request to that effect to the Minister. The revocation becomes effective three months after notice of revocation has appeared in the *London Gazette*.

¹ The Minister has made an order under the Act. S.R. and O., 1935, No. 602.

CHAPTER II

STATUTORY ENACTMENTS AS TO THE ASCERTAINMENT OF WAGES (PARTICULARS AND CHECKWEIGHING)

NOTE.—Throughout this chapter the terms Home Office, Home Secretary, and the Secretary of State, must be read in the light of the note on p. 25.

The problem to which the present section is addressed concerns piece workers only. There are two points as to which controversy can arise to the detriment of the worker. The first is as to the rate of wages to be paid for the work. Let us take an imaginary example. A woman outworker goes up to a factory to ask for work which she intends to do at home, and she asks verbally what the price is. She is told that it is 9*d.* per gross, to which she replies that Mr. Jones is paying 11*d.* per gross and why can't she have the latter figure. The employer's order is urgent so he says: "I'll give you tenpence," and the woman assents. When she brings the finished work back it is taken in by someone else who is used to paying 9*d.* and only offers that. If the woman insists on 10*d.* and gets it she may never get any more work. If she insists on 10*d.* and doesn't get it, and takes the matter into Court, the employer, if unscrupulous, can deny that he ever promised 10*d.* and then there is her word against his word and against the practice of the firm to pay 9*d.*, and the woman in all probability will lose her case. Again, the dispute may not be over the rate to be paid, but over the work to be done in return for the promised wage. A woman, for instance, takes out coats to be machined at home, and the work involved may include, besides the actual machining necessary to make a complete garment, some extra machining to give it style. A price is fixed, and the employer does not dispute it, but he claims that the worker has not done all she promised to do, and he therefore offers less than the agreed price. Here again the uncertainty of a verbal arrangement is all in the master's favour. Then there are questions of counting and weighing. A woman in course of making some small metal goods is given a box full of work to do. When she has finished she thinks she has done 4½ gross, but the employer on pay night asserts that there were only 4 gross in the box. By the time the controversy arises the work has got mixed with other work and the employer's version is sure to be insisted on.

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This kind of grievance is not confined to women ; as regards measuring and weighing controversies generally arise from men's work. In coal mining and quarrying and in foundries it is quite usual for work to be paid for by weight. In some cases it is possible for a man to see his work weighed, but not in others. For instance, the coal getter loses sight of his work when the tubs which he fills are sent away a considerable distance to be weighed. It is a matter of considerable importance to eliminate, not merely the chance of actual dishonesty on the part either of the employer or the workman, but also the disputes which arise from carelessness, incorrect memory, and ambiguous or inconclusive bargaining. A document in writing, seen and agreed to by both parties, is the outstanding precaution against these difficulties. An individual document (commonly called a ticket) for each worker for each transaction is the surest safeguard, but may be laborious and costly as a system. A placard is a great saving of trouble, but is inapplicable to varying circumstances. A placard may be admirable for notifying what the rate of payment is, but entirely useless for settling the question whether Mrs. Jones was given 4 gross or $4\frac{1}{2}$ gross of work. When it is a question of weighing work, if the work cannot be weighed in the presence of the worker, the best device is to allow someone to act on the worker's behalf, to check the accuracy of the weighing.

These difficulties have been known and discussed for well over one hundred years, but the interference of the State on any large scale is comparatively recent. The power of the Home Office to enforce the giving of particulars in an industry by making a special order applicable to that industry only dates from 1895, and the similar power to set up a system of "check weighing" in an industry only dates from 1919 and at present is hardly known.

The details of legislation on these points are as follows : As early as the Arbitration Act of 1824 it was enacted that a ticket of particulars might be used in giving out work and, *if both parties agreed* to this being done and to the form of the ticket, then in the event of dispute between the manufacturer and workman, the ticket was to be "evidence of all matters and things mentioned therein or respecting the same". In the year 1845 compulsory "tickets" were introduced in the hosiery trade and the silk weaving trade, and the Acts of that year are still in force. The Hosiery Act, 1845, enacted that when a manufacturer of hosiery gave out to a workman materials to be wrought he was at the same time to deliver a printed or written ticket, signed by himself, containing the particulars of the agreement in a form contained in a schedule

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to the Act. This schedule contained separate provisions with regard to stockings, socks, gloves, shirts, and caps, and a general form for other descriptions of hosiery. The particulars as to socks, which form almost the simplest class, will give a good idea of the variety of points on which disputes could arise if no exact record were kept. The ticket must state the gauge, whether ribbed or plain, what kind of material, the size, the jack in width, the mark, the length of leg with top, the length of foot, the narrowings in heel, gusset, and toe, whether cut or wrought heels and feet, the price per dozen pair, the name of the party putting out the work, and the name of the artificer. The manufacturer had to keep a duplicate of the ticket until the work contracted to be done was completed or paid for. In the event of any dispute between the manufacturer and the workman, the ticket and the duplicate were to be produced, and were evidence of all things mentioned in them, but if the subject of dispute related to an alleged improper or imperfect execution of any work, such piece of work was to be produced, and in default of production was to be deemed to have been sufficiently and properly executed. The Silk Weavers Act, 1845, was on similar lines, but the giving of a ticket could be dispensed with if both parties agreed in writing to that course. Besides the names of the parties, particulars had to be given of the details of the weaving and the price in sterling money agreed on for executing each yard imperial standard measure of thirty-six inches of such work in a workmanlike manner. The reference to the imperial yard suggests that disputes used to arise as to what a yard was.

The next statute to notice is an Act for the Regulation and Inspection of Mines, passed in 1860. This Act sanctioned the employment of an official, from 1872 onwards known as a "checkweigher", paid by the piece workers, who might be stationed at the place appointed for the weighing, measuring, or gauging of the coal, ironstone, or other material gotten, in order to take an account thereof, and also of the weight, measure, or gauge used therein on behalf of such persons as employed him. From 1872 onwards mines have been classified into "coal mines" and "metalliferous mines" and so far checkweighing is confined to "coal mines", but the reader must note that the term "coal mines" applies to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay. By the Coal Mines Regulation Act, 1872, the duties of checkweighers were simplified by relieving them of part of the duty of testing the weights and measures used. A current Weights and Measures Act was applied to coal mines so that the

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testing of the weights and measures used became part of the work of official inspectors of weights and measures. The existing legislation as to checkweighing in mines is contained in sections 12 to 14 of the Coal Mines Regulation Act, 1887, section 1 of the Coal Mines (Checkweigher) Act, 1894, and the Coal Mines (Weighing of Minerals) Act, 1905, all of which will be found verbatim in Appendix XI of *Industrial Law*. The following is a summary of the more important of those provisions. Where the amount of wages paid to any of the persons employed in a mine depends on the amount of coal gotten by them, those persons shall be paid according to the actual weight gotten by them, and the mineral gotten by them shall be truly weighed at a place as near to the pit mouth as is reasonably practicable. Deductions for stones, etc., and for the improper filling of tubs may be made either in some manner specially agreed or by agreement between some person appointed by the mine owner on the one hand and the checkweigher on the other hand, and in the latter case in default of agreement, by an arbitrator. If the mine does not employ more than thirty persons underground the Home Secretary may devise an alternative scheme.

An interesting case was decided in 1920 by the House of Lords as to what the rights of the parties are when no agreement as to deductions has been arrived at. In this case no special agreement had been arrived at, and the owner's weigher and the miner's checkweigher could not agree. The checkweigher refused to consent to any mode except the actual picking over and weighing in the case of each and every hutch, a mode which admittedly meant the stoppage of the mine owing to the time which this process would take and the consequent accumulation of trucks. The owners proposed to determine the deductions by a system of averages. The miners apparently thought that if they refused to agree to any practicable method of arriving at the deductions no deductions from the weights as ascertained by weighing the gross amount of mineral sent up could be made, and they would be entitled to be paid for the gross weight, and they brought a test action in which they claimed to be paid on such gross weight. The company proved that a substantial part of that gross weight was not coal. On that finding the House of Lords held that the miners could not succeed in their claim.¹

The persons who are employed in a mine and are paid according to the weight of the mineral gotten by them may at their own cost station a checkweigher at each place appointed for the weighing of the mineral and at each place appointed for determining the

¹ Coltness Iron Co., Ltd., v. Dobble, 1920 A.C. 916.

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deductions in order that he may, on behalf of the persons by whom he is so stationed, take a correct account of the weight of the mineral or determine correctly the deductions as the case may be.

The persons appointing a checkweigher may also appoint a deputy to act in the absence of the checkweigher for reasonable cause, and the deputy has the same rights and duties as the checkweigher himself.

A checkweigher is to have "every facility afforded to him for enabling him to fulfil the duties for which he is stationed, including facilities for examining and testing the weighing machine, and checking the taring of tubs and trams where necessary, and including provision for him of a shelter from the weather, containing the number of cubic feet requisite for two persons, a desk or table at which the checkweigher may write, and a sufficient number of weights to test the weighing machine".

On the other hand, a checkweigher is not in any way to impede or interrupt the working of the mine, or to interfere with the weighing, or with any of the workmen, or with the management of the mine, but to confine himself to taking such account or determining such deductions as have been mentioned. If he is absent, the weighing, etc., may proceed in his absence, unless he had reasonable ground to suppose that the weighing, etc., would not be proceeded with. He is free to give relevant information about the weighing or the deductions to any of the workmen for whom he is acting, but he must not do so in any way which interrupts or impedes the working of the mines.

A checkweigher may be removed for impeding or interrupting the working of the mine, or interfering with the weighing or with any of the workmen, or with the management of the mine, or for exceeding his duties to the detriment of the mine owner, but only by a Court of Summary Jurisdiction. The mine owner makes the complaint, and the Court hears the parties and then if the Court thinks that sufficient ground is shown to justify the removal of the checkweigher it must make a summary order for his removal. On the other hand, the mine owner's weigher must not impede or interrupt the checkweigher in the proper discharge of his duties, or improperly interfere with or alter the weighing machine or the tare in order to prevent a correct account being taken of the weighing and taring.

The checkweigher is appointed by a majority, ascertained by ballot, of the persons employed in the mine who are paid according to the weight of the mineral gotten by them, whether they are in charge of the working places, or holers, fillers, trammers and the

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like classes. The act of the majority binds the minority, and all the workers so paid must contribute to his salary as also must new workers who have come into the mine after the checkweigher's appointment. Special provisions are inserted where there is a contractor who is paid according to weight gotten, and persons working under him who may or may not be paid on that footing. All these persons may vote in the appointment of the checkweigher, but their contributions are payable by the contractor.

The checkweigher is removable by a majority, ascertained by ballot, of the persons who would have the right to vote at the time of removal for the appointment of a checkweigher.

All persons who are entitled to appoint a checkweigher are to be given due notice of the intention to appoint by a notice, posted at the pithead or otherwise, specifying the time and place of the meeting, and are to have equal facilities for recording their votes. The chairman of the meeting has to make a statutory declaration as to the appointment, and this declaration must be forthwith delivered to the mine owners and is *prima facie* evidence of the appointment.

It is obvious that for the successful working of these arrangements the workers concerned must have perfect liberty of choice, and the Act of 1894 deals particularly with this point and makes it an offence for the owner, agent, or manager of any mine, either personally or through a person employed by them or acting under their instructions, to interfere with the appointment of a checkweigher, or to refuse to afford proper facilities for the holding of any meeting for the purpose of making such appointment, when the persons entitled to make the appointment do not possess or are unable to obtain a suitable meeting place; or to attempt, whether by threats, bribes, promises, notice of dismissal, or in any other way to exercise improper influence in respect of such appointment, or to induce the persons entitled to vote for a checkweigher or any of them not to reappoint a checkweigher, or to vote for or against any particular person or class of persons in the appointment of a checkweigher.

Finally it is to be noticed that the Weights and Measures Act, 1878, is applied to all weights, balances, scales, steelyards, and weighing machines used at any time for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, and these weights, etc., must be inspected and examined by an inspector under that Act once at least in every six months, and also whenever he has reasonable cause to believe that any false or unjust weight, etc., is

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in use at the mine. The inspector must also inspect and examine the measures and gauges in use at the mines within his district.

These provisions have been stated at some length because they form the basis of the Checkweighing in Various Industries Act, 1919, which came into force on 1st September, 1919, and which contains provisions for the extension of checkweighing to any suitable industry at the instance of the Home Office.¹

The Act begins by giving to workmen in any industry to which the Act applies and paid according to the weight of material produced, handled, or gotten by them, a right, notwithstanding any agreement to the contrary, to check the weighing of the material or to test the accuracy of the estimated weight of the material in the manner provided by the Act or by regulations made under it.

The Act is applied forthwith to four industries, but may be extended to any other industry by regulations made by the Home Secretary. These four industries are as follows :—

- (a) The production or manufacture of iron or steel, including any process of founding, converting, casting, rolling, or otherwise finishing iron and steel.
- (b) The loading or unloading of goods, whether as cargo or stores, into and from vessels.
- (c) The getting of chalk or limestone from quarries.
- (d) The manufacture of cement and lime.

The rest of the Act is mainly an adaptation of the provisions for checkweighing in mines to the special circumstances of those four industries.

The first sub-section of section 2 brings into force the first schedule, containing detailed regulations for each of the four industries, and these regulations are the mining regulations modified to meet the different circumstances of the four industries. Then in the second sub-section of section 2 there is a general enactment that where the workmen of an industry are authorized to appoint a checkweigher, the checkweigher shall be entitled to station himself at any place appointed for the weighing of material, in order that he may on behalf of the workmen by whom he is appointed take a correct account of the weight of the material, and the employer shall afford to him all proper facilities for examining and testing all weighing machines and checking the taring of wagons in which the material is weighed. The third sub-section of section 2 brings into force such parts of the Acts of 1887, 1894, and 1905 relating to checkweighing and mines as are capable of general application—namely, the third, fourth, fifth, sixth, and eighth

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sub-sections of section 13 and section 14 of the Act of 1887, the first section of the Act of 1894, and sub-sections 1, 4, and 6 of section 1 of the Act of 1905, the necessary changes in phraseology being made.

The provisions of the fourth section are new and are to the effect that where at any works the material on the weight of which wages are based is weighed at intervals and not continuously the employer must give to the checkweigher reasonable notice of the time and place at which the weighing will take place. On the other hand, where the checkweigher attends at the place where the industry is carried on for the purposes of his duties at irregular intervals he must give the employer at least two days' notice of his intention to attend.

Finally the making of regulations for industries to be brought under the Act in the future is to be in accordance with sections 81, 84, and 86 of the Factory and Workshop Act, 1901, with certain necessary adaptations.

There is therefore in this Act an immediate extension of checkweighing to four new industries and a scheme for its extension to other industries, as required.

It is now necessary to go back to the first general introduction of compulsory particulars. The hosiery trade and the silk weaving trade were merely two out of a great many textile industries. The Factory and Workshop Act, 1891, made particulars compulsory in all textile factories.

There was similar legislation in section 116 of the Factory and Workshop Act, 1901, and the present law is contained in the Factories Act, 1937, section 112. The Act defines a textile factory for the purposes of that section as any factory in which mechanical power is used in the spinning, weaving, or knitting of cotton, wool hair silk (including artificial silk), flax, hemp, jute, tow, china-glass, coconut fibre, asbestos, or other like material, either separately or mixed together, or mixed with any other material or any fabric made thereof or in any process preparatory or incidental thereto, whether or not carried on in the same premises.

As section 112 is rather complicated the table on the opposite page has been drawn up to assist the reader in mastering its contents, and that table with the following general observations should be sufficient. The reader may refer to the Factories Act itself, or to any annotated edition of it, for further details. In the first place the section makes it the duty of the occupier of every textile factory, for the purpose of enabling each worker who is paid by the piece to compute the total amount of wages payable

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(A) PARTICULARS OF RATE OF WAGES

CLASS OF WORKPEOPLE.	INDUSTRY.	RULES.
Weavers	Worsted or woollen (excluding hosiery)	Particulars (<i>a</i>) are to be furnished to the worker in writing at the time when the work is given out, (<i>b</i>) are also to be exhibited on a placard.
Weavers	Cotton Trade	Particulars as in (<i>a</i>) above and (<i>b</i>) the basis and conditions by which the prices are regulated and fixed are also to be exhibited on a placard in each room.
Every other worker than above	Textile factories generally	Particulars as in (<i>a</i>) above but if the same particulars are applicable to the work to be done by each of the workers in one room they may be exhibited on a placard in that room.

(B) PARTICULARS OF WORK

All workers	Textile factories generally	Particulars as in (<i>a</i>) above except so far as they are ascertainable by an automatic indicator.
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to him in respect of his work, to publish particulars (a) of the rate of wages applicable to the work to be done, and (b) of the work to which that rate is to be applied, in accordance with the table on the preceding page, as explained in these observations. Where a placard can be used it is always stipulated that the placard must not contain any other matter, and must be posted where it is easily legible. The section contains detailed instructions as to what must be marked in the case of an automatic indicator, and special penalties are imposed if the occupier fraudulently uses a false indicator, or a workman fraudulently alters an automatic indicator. Particulars either as to rates of wages or as to work are not to be expressed by means of symbols. Special penalties are imposed for the disclosure of particulars for the purpose of divulging a trade secret, both on the worker who discloses and on anyone who solicits or procures such disclosure.

The Factory and Workshop Act, 1895, gave the Secretary of State power to extend these provisions by Special Order to non-textile factories and to most classes of workshops. Now, under sub-section 5 of section 112, the Secretary of State on being satisfied by the report of an inspector that the provisions of that section are applicable to any class of factories other than textile factories may, if he thinks fit, by regulations apply the provisions of the section to any such class, subject to such modifications as may be necessary in the circumstances of the case, and he may also apply these provisions to outworkers.

The following industries have been brought within the provisions of the Particulars Clause :—

Making of pens, locks, latches and keys, cables and chains, anchors and grapnels, cart gear, felt hats, artificial flowers, tents, rope and twine, paper bags, paper, cardboard or chip boxes, brushes, nets (other than wire nets), iron safes, curtains and furniture hangings, and files.

Manufacture of cartridges, tobacco, toy balloons, pouches and footballs from india-rubber, chocolates and sweetmeats, and lampshades.

Making or repairing of umbrellas, sunshades, parasols, and sacks.

Making, altering, or ornamenting, finishing and repairing wearing apparel.

Making up, ornamenting, finishing, and repairing table linen, bed linen and other household linen.

Covering of racquet and tennis balls.

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Fustian cutting, relief stamping, fur picking, bleaching and dyeing, printing of cotton cloth.

Warehouse processes in the manufacture of articles of food, drugs, perfumes, blacking, starch, blue, soda or soap.

Processes incidental to the making of lace.

Mixing, casting, and manufacturing of brass and of any articles of brass and the electro-depositing of brass.

Laundries.

Building or repairing of ships in shipbuilding yards.

Moulding in iron or steel foundries.

Manufacture or decoration of pottery.

The reader will have noticed that in making these regulations the Secretary of State has power to modify the clauses of section 112 of the Factories Act to suit the special circumstances of each industry, and though in legislation on a considerable scale "Common form clauses" are sure to be made use of, yet there is an individuality about the twenty-one sets of regulations which cover the industries which have been enumerated. It would be wearisome to examine these in detail, but it seems worth while to take a typical set of regulations and to describe briefly its contents so far as they illustrate this power of modification. The example selected deals with "Factories and Workshops in which the under-mentioned processes or any of them, are carried on, and outworkers employed in those processes and the occupiers and contractors by whom they are employed in the manufacture of chocolates or sweetmeats, and any work incidental thereto". The first point to notice is that as regards written particulars of the rate of wages the occupier or contractor is given three options: (1) He may use a *ticket* or other means of furnishing the individual worker with such particulars on each occasion of giving out the work. (2) He may give the worker a *notice* containing the particulars at or before the time of his first employment on any class of work. If a new rate is fixed there must be a new notice stating the new rates and the date from which they are to come into operation. If a worker accidentally loses or destroys his notice, the employer must furnish him with a new notice free of charge. (3) He may exhibit in the department of the factory or workshop where the work is done a *placard* containing the particulars. This last provision is not applicable to outworkers.

Particulars of the nature and amount of the work to be done must in general be furnished in writing at the time when the work is given out to the worker. This is what we have called a *ticket*.

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As regards outworkers there is no exception to this rule. In the case of persons employed in a factory or workshop where the work is of a standard class which is sufficiently indicated by the materials given out and also is denoted in a placard exhibited as above, and containing the rate of wage for the work by a description or name sufficiently indicating its nature, then no further particulars of the nature of the work need be given. Sometimes particulars of the amount of work on which the worker is to be paid cannot be ascertained in the case of workers in a factory or workshop until the work is completed. In this case, as soon as practicable after the completion of the work, particulars must be given to the worker either by an individual ticket or by a placard exhibited in the department in which the work is done.

The next point is to allow of a modification where the work is done by a gang and the earnings are the common earnings of the gang and not of the individual workers. Here the requisite particulars are (a) the rate of wages applicable to the work to be done by the gang, and unless the gang divide the earnings at their own pleasure the proportions according to which the wages of the several members of the gang are calculated; (b) such particulars of the work to be done by the gang as affect the amount payable to the gang. The occupier may either give a ticket to each member of the gang or exhibit a placard in the department in which the work is to be done.

A further point is to allow such modifications as the sub-divisional system may require. If the worker has either to return any written particulars or to hand them on with the work to another worker there must either be a spare copy given to and retained by the worker for his own use, or the worker must be supplied with a book in which to enter the particulars, and this book must be produced when the work is received back by the employer and the entry in it initialled on his behalf if found correct.

CHAPTER III

STATUTORY SAFEGUARDS AS TO THE PAYMENT OF WAGES (TRUCK ACTS)

As has already been pointed out, legislation against the evils of truck, i.e. payment of wages in goods or otherwise than in current money, has been in existence for more than five hundred years. The earliest Truck Act now in force is the Truck Act, 1831. The scope of that Act was extended by the Truck Amendment Act, 1887, so as to include in place of the workers enumerated in the Act of 1831 all workmen embraced by the general definition of a workman contained in the Employers and Workmen Act, 1875. By the combined operation of the Acts of 1831 and 1887 the protection of both Acts is given to any person (not being a domestic or menial servant) who is a labourer, servant in husbandry, artificer, handicraftsman, miner, or otherwise engaged in manual labour, who has entered into or works under a contract of service, or a contract personally to execute work or labour.

The object of the Act of 1831 was twofold. In the first place it prohibited contracts which directly or indirectly made the workman agree to take his wages otherwise than in cash. The bargain must be for wages payable in cash and must contain no terms binding the workman to expend his wages, wholly or partially, at any particular place, or in any particular manner. In the second place the employer must perform his side of the contract in strict accordance with its terms. The entire earnings of the workman must be paid to him in cash, and payment of wages actually made in goods or otherwise than in cash may be treated as gifts, and the whole of the money wage recovered in a Court of Law. The Act of 1887 made the workman's position even more secure, by prohibiting the payment of wages by orders on tradesmen for goods, and taking away from a tradesman who supplies goods on a master's order the right to sue the workman for the price of such goods. Further, the Acts must not be evaded by the employer laying down as a condition of employment terms as to the expenditure of wages, or by the employer dismissing a workman on account of the way in which the workman has actually spent his wages.

The workman has therefore been very carefully protected on general lines from receiving his wages otherwise than in cash, but

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in certain industries a system under which the master supplies certain things connected with the industry may, under proper safeguards, be a benefit to the workman because the master has better facilities for providing these things than any individual workman is likely to have. This is, however, not so much the case to-day as it was a hundred years ago, and some of these provisions suggest a primitive organization of industry which has largely, if not completely, disappeared. Two cases are limited in their application. Thus, a miner for trade purposes may be supplied by his master with materials, tools or implements, and the price may be deducted from the miner's wages if two conditions are fulfilled. There must be an agreement in writing to that effect signed by the workman, and the deduction must not exceed the real and true value of what has been supplied. So in the case of a workman who uses his own horse in doing his master's work, the master may supply hay, corn, etc., for consumption by the horse, but the deduction of the price from wages can only be made subject to the two conditions already set out in the case of the miners.

There are four subjects of deductions from wages allowable under the Act of 1931 in all industries. The first is in respect of medicine and medical attendance supplied through the master's agency. The National Health Insurance Acts have made this custom obsolete and there is no need to dwell on it. The second is a deduction for fuel supplied. The writer is not aware that fuel is now customarily supplied to any class of workers other than miners. Here again there must be an agreement in writing signed by the workman and the deduction must not exceed the real and true value. The third exception is house room. The supply of house room by the master is quite a common incident in mining and also in the case of large works where cottages have been erected on the master's premises. There must be an agreement in writing signed by the workman, but there is no stipulation for anything in the nature of a fair rent. This system has undoubtedly in some districts been a solution of a real housing problem, though probably not an ideal solution. It is said that in some cases a tenant workman does not like to ask his employer to do repairs. In the case of a strike it undoubtedly tends to increase the bitterness of the struggle. As no wages are being paid no rent is paid. If the master takes no steps he feels that his workmen, in so far as they are living rent free at his expense, have an unfair advantage. On the other hand if the master attempts to evict his workmen tenants, he is held up as particularly inhuman. The fourth exception is the supply of victuals dressed and prepared under the employer's

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roof and there consumed by the workmen. Employers' canteens are usually run on the system of cash payments, but the employer may supply the meals on credit and deduct the price from the wages payable. The price charged is left to the employer. But here again the arrangement requires a signed agreement.

The law as thus stated seems reasonably clear but quite recently a case was taken to the House of Lords, and so general was the misunderstanding of the effect of the Truck Act, 1831, that an Act of Parliament, the Truck Act, 1940, was enacted to restrain further legal proceedings and to clear up one doubtful matter. In this case, *Pratt v. Cook, Son, and Co.* (1940 A.C. 437), the facts were as follows: Pratt was a packer, engaged by the defendant's predecessors at 53s. a week, plus dinner and tea, those two meals being regarded as equivalent to 10s. a week. The form of the contract should be noticed as it was for a money wage and for the supply of food; on the face of it there was no deduction from the money wage. There was no signed agreement. On March, 1920, the defendants took over the business and the plaintiff continued to work as a packer for them, receiving always the minimum wages of a packer less 10s., but receiving his dinner and tea. During his holidays he was paid 10s. extra in cash. In December, 1935, the defendants arranged for their men to have a canteen of their own, and thenceforth the plaintiff was paid an additional 10s. in cash. He sued for £397 10s. representing 10s. a week from 8th March, 1920, to 1st December, 1935. The plaintiff won his case in the Court of first hearing, lost it in the Court of Appeal, and finally succeeded in the House of Lords. In the Court of Appeal, Slesser L.J. took the view that a composite contract did not offend against the principle of Truck. This view was overruled by the House of Lords, who held in effect that such a contract involved a deduction because the food was supplied on account of wages, and therefore the workman's signature to the agreement was required. To prevent similar claims where the only irregularity was the absence of the workman's signature the Truck Act, 1940, was passed. The Act at the same time made it clear that where the Truck Acts were infringed, thereby rendering the contract of service a nullity, the workman was to be considered as in employment for other purposes, such as workmen's compensation, insurances, and pensions.

The Act of 1887 made three variations in the general position arrived at under the Act of 1831. First it dealt with the custom of allowing a workman to draw wages in advance of the regular pay day. This is colloquially known as "subbing". The aim of the Act is to prevent the employer from arbitrarily withholding

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customary "subs", and from charging for making them. The enactment runs as follows: "Wherever by agreement, custom, or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance in part or on account thereof, it shall not be lawful for the employer to withhold such advances or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge."

The next point was to clear up the position of the agricultural labourer. He was not included in the Act of 1831, but comes under it by force of the new definition adopted in the Act of 1887. He has customarily had a cottage and other things supplied by the farmer as part of his remuneration. The Act of 1887 makes it legal for the farmer to make a contract with a servant in husbandry for giving him food, drink (not being intoxicating), a cottage, and other allowances or privileges in addition to money wages. His money wages must of course be paid to him in cash. Under the provisions of the Agricultural Wages (Regulation) Act, 1924, the money wage must be not less than the minimum wage, minus the valuation put on these allowances by the County Committee.

Finally, in regard to charges for sharpening or repairing tools, no deduction can be made from wages except by agreement not forming part of the condition of hiring, and there must be a yearly audit by two auditors appointed by the workmen of the employer's account of his receipts and expenditure in this connection.

It should be noticed that the Truck Act, 1887, was the first Act to protect a class of home-workers who are not strictly "earning wages", as their finished product is bought by a shopkeeper or dealer. A similar section appeared in the Trade Boards Act, 1909, but has not been included in the Wages Councils Act, 1945. The articles must be made by a person at his own home without the employment of any person under him except a member of his own family. The home-worker is treated as a workman, the shopkeeper or dealer as the employer, and the price is to be regarded as wages. The articles must be under the value of £5, and made up of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, bone, thread, silk or cotton lace or of lace made of any mixed materials. This list is apparently not exhaustive. Toys and simple implements of metal are quite suitable for being made at home.

Before we pass to the Truck Act, 1896, it will be as well to consider two other Acts which are more nearly related to the Truck Acts which we have already considered, viz. the Payment

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of Wages in Public Houses (Prohibition) Act, 1883, and the Shop Club Act, 1902.

The former Act was merely the extension to industry generally of what has been law as regards the mining industry since 1842. The payment of wages in public houses obviously leads to the treating of the foreman or other person who pays the wages and to the expenditure of wages in the public house by the recipients before they go home. The Act prohibits the payment of wages on licensed premises and penalizes both the person who actually pays wages in contravention of its terms and the person who permits another to contravene the Act. Under this latter provision a publican who knowingly allowed his house to be used in contravention of the Act would be liable to a penalty. The Act does not merely punish a foreman or other subordinate who is the actual person to contravene it. The employer himself is liable unless he can prove that he has taken all reasonable means in his power to enforce its provisions and to prevent contravention. The provision by the employer of a proper place at which to pay wages would seem to be a reasonable requirement.

The Shop Club Act, 1902, dealt with the various clubs and societies which prior to its passing provided benefits, generally, but not necessarily, in the form of weekly payments during sickness, to workmen in connection with a workshop, factory, dock, shop, or warehouse. Beside the great Friendly Societies, there were many local sick clubs, all based on attachment to some local institution, which at one end of the scale might be a religious body such as an Adult School, and at the other end a local public house, while others were attached to a particular works. The promoters of all these clubs had a double purpose in mind. One was the promotion of thrift, while the other was to establish a permanent bond, the snapping of which by the workman would place him at some monetary disadvantage. It is obvious that a works' club on a compulsory basis might be a means of exercising a good deal of pressure on workmen to remain with their employers while there was little or no security that the form of thrift adopted was really sound and advantageous. The former evil was directly contrary to the spirit of the Truck Acts. Week by week deductions would be made from the workmen's wages for an object which we will suppose to be sound. To that extent the workman was deprived of his independence in the spending of his wages. The sounder the scheme from the thrift point of view, the larger became the accumulated value of the deductions and the greater the penalty became if the workman threw up his employment or was discharged.

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On the other hand, if the scheme was unsound, the workman parted with his wages without any adequate return. There was the further disadvantage that these works' clubs were the rivals of the registered Friendly Societies, which were carried on under a fairly stringent system of regulation and inspection and that works' clubs could be and were used both to withdraw members from such societies and to hinder persons from joining them. As a matter of fact, works' clubs were as a rule "dividing out" clubs, in which the greater part of the funds, after paying sickness benefits, were periodically shared between the members. This is a form of club which is actuarially unsound and unfair and depends for its permanent existence on a continual supply of young members. With these general observations in mind it is quite easy to follow the provisions of the Act. The Act is still in force, but the passing of the National Insurance Act, 1911, very much diminished the practical importance of the Act, though the first section continues to be a valuable additional safeguard to the independence of the worker in regard to his expenditure of his wages.

Under section 1 of the Shop Club Act, 1902, an employer must not make it a condition of employment (a) that any workman shall discontinue his membership of any friendly society, or (b) that any workman shall not become a member of any friendly society other than the shop club or thrift fund.

Under section 2 an employer can only make it a condition of employment that any workman shall join a shop club or thrift fund if such club or fund is registered under the Friendly Societies Act, 1896, and is certified by the Registrar of Friendly Societies. The Registrar, before he certifies the club or fund, must satisfy himself as to three things: (1) That the club or fund affords to the workman benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workmen. (2) That the club or fund is of a permanent character and is not a society that annually or periodically divides its funds, and that no member upon leaving the employment shall be required to cease his membership except in accordance with section 6; and (3) that 75 per cent of the workmen desire the establishment of the club or fund.

Under section 6 where a workman by the conditions of his employment is a member of a shop club, then in general on ceasing to be employed he has the option of remaining a member or of having returned to him the amount of his share of the funds of the club, to be ascertained by actuarial calculation.

There is an express provision in the Act that its terms are not

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to prohibit compulsory membership of any superannuation fund, insurance, or other society already existing for the benefit of persons in the employment of a railway company which itself makes contributions to the funds of such society.

The Truck Act, 1896, deals with the whole subject of deductions from wages as a matter (a) of discipline, (b) of compensation to the master for spoilt work or damaged material, and (c) of charges for services rendered by the employer by way of the supply of materials, tools, standing room, power, etc. It may perhaps be a convenience to use the word "disciplinary fine" in respect of disciplinary matters, "deduction" in respect of the master's self assessment of compensation, and "charge" in respect of the supply of definite articles or benefits by the master to the workman.

It is a matter of some importance in dealing with an Act which has raised a great deal of controversy to try and realize how an employer and workman would stand to each other in regard to these matters if there were no legislation on the lines of the Act of 1896, and they were left to their rights under the Common Law, either alone or as modified merely by the earlier legislation as to truck. It has already been stated that it is an implied term of the contract of service that the workman shall submit to the necessary discipline of his employer's business. A breach of such discipline is therefore a breach of contract, but a breach of contract has at Common Law one of two effects. If it is such a serious breach as to affect the whole position of the parties, then the aggrieved party has the right to say that the contract has virtually been put an end to, and that he is no longer bound to perform his part of the contract. In other words, the employer might in these circumstances dismiss the workman without notice. In less serious cases of breach of contract the employer would at Common Law merely have a right of action for damages, but the employer's loss on each occasion of a minor breach of discipline would be likely to be so small that the game would not be worth the candle. An employer would hardly care to bring before the Courts a workman for an isolated case of lateness, or a workgirl for not wearing a cap over loose hair when working near dangerous machinery. The employer would fear that if he asserted his legal rights in this way he might get very little sympathy, and might have his case dismissed as trivial, or the workman might be dismissed by the Court with a caution which the employer himself might have administered.

An employer who liked to draw up rules could at Common Law make the observance of those rules part of the contract of service,

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and could agree with the workman as to what sums should represent the damages which the employer could claim for breach of contract. Under the term "liquidated damages" the law allows the parties to a contract to settle beforehand what the damages payable for a particular breach shall be. The matter has to be done with care, otherwise the Court is at liberty to say that the sum mentioned is not a true assessment of damage but a "penalty" which the Court may disregard, and that the damages must be independently assessed by the Court.

It would, however, be possible, though not very easy, to have a series of fines for minor breaches of discipline which would be recoverable in a Court of Law. In form they would not strictly be capable of deduction from wages, but the employer who did deduct them from wages on being sued by the workman for his wages would have been able under the Common Law to counter-claim for breach of contract, and if he made good his claim that the sum deducted was of the nature of liquidated damages for breach of contract he would win his case. It is clear from the decision of the House of Lords in *Williams v. North's Navigation Collieries, Ltd.* (1906, A.C. 136), that the Truck Act, 1831, does not allow the employer to make such deductions. What the Act of 1896 has done with respect to fines for breaches of discipline is to legalize them very much on the lines of the Common Law prior to the Truck Act, 1831, that is to say it allows deductions from wages in respect of such legalized fines, but in so doing it has not merely gone behind the Act of 1831, it has also in practice shifted the burden of proof very much to the disadvantage of the workman. At Common Law if the workman sued the master for the balance of his wages, all the workman would have to do would be to prove that he had been paid less than he had earned, and then the employer would have to prove a definite breach of contract, and that the sum deducted was of the nature of liquidated damages. Now under the Statute fines are legalized on conditions somewhat less onerous than the Common Law imposed, and the workman who objects to the deduction has to prove that the Act has been contravened. Further the idea becomes prevalent that fines are legal, though there are certain mysterious conditions attaching to them, and the working man and even his Trade Union is very shy of initiating legal controversies which he does not fully understand. Even under the Common Law the workman would understand that the law was on his side, and that he had a right to his wages in full until his employer had proved some rather difficult and intricate points. Under the Act of 1831 no deductions for fines

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were permissible at all. Under the Act of 1896 the workman feels that the employer, by fulfilling certain easy conditions as to notices, has the law on his side, and that if there is more or less of an appearance of legality in the proceedings he had better say nothing. In the case of unorganized and uneducated workers who quite likely receive a printed ticket each week with an item " fines " in juxtaposition with an item " insurance contributions ", the one may very well stand on the same footing as the other.

The actual provisions of the Act of 1896 as to disciplinary fines are as follows: There must be a contract with the workman authorizing fines, but it may be made by the employer putting up a notice and keeping it constantly fixed at a place open to the workman, and in such a position that it may be easily read and copied by any person whom it affects. As an alternative there may be a contract in writing signed by the workman. This alternative form generally consists of a book of rules with a space at the end for the workman's signature below a form of acceptance of the rules.

The contract, whatever its form, must specify the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which the amount may be ascertained. Further, the specified acts or omissions must be such as to cause or to be likely to cause damage or loss to the employer or interruption or hindrance to his business and the amount of the fine must be fair and reasonable. Particulars in writing showing the acts or omissions in respect of which the fine is imposed and its amount must be supplied to the workman on each occasion. It should be carefully noted that this part of the Act applies to shop assistants as well as workmen.

Section 2 deals with deductions in respect of bad or negligent work, or injury to the materials or other property of the employer. As in section 1, there must be a contract made either by the exhibition of a placard or in writing signed by the workman; the deduction must be fair and reasonable; and particulars in writing showing the acts or omissions for which the deduction has been made must be supplied. Further, the deduction must not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman.

The effect of this section is well brought out by some recent cases. On 3rd March, 1897, the Home Secretary made an exemption order under section 9 of the Act in respect of persons engaged in the weaving of cotton in Lancashire and adjacent counties. These persons were therefore relegated to their rights under the Truck

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Act, 1831. A few years ago the question was raised in the Courts ¹ whether piece workers in that trade who returned a certain amount of bad work were bound to submit to deductions from the piece prices of which particulars had been given to them. It was argued that such prices without deduction constituted their wages, and that under the Act of 1831 wages must be paid in full. It was admitted at the hearing of the case that deductions for bad work were, and had been for many years, the usage and custom in the trade, and had always been and were an incident of a weaver's contract of service and had always been and were taken into account in calculating the correct wages. A case ² heard in 1846 was cited in which such an arrangement was described as the mode of calculating the amount of wages and nothing more. The decision was that the weaver's wages were what was due to them after making the customary deductions for bad work. A year or two previous to the decision of the first case cited above a case ³ of a pipe moulder on piece work had been heard under the Act of 1896. He had agreed to take a certain price for a complete pipe, and to take lower prices for faulty pipes. The Court held that the difference between the prices constituted deductions for bad work, and as a placard had not been exhibited, and particulars in writing of the acts and omissions had not been supplied, section 2 of the Act of 1896 had been infringed.

Section 3 deals with charges for or in respect of the use or supply of materials, tools or machines, standing room, light, heat, or any other thing to be done or provided by the employer in relation to the work or labour of the workman. There must be a contract on the usual lines, and particulars of the charges must be furnished to the workman. The charge under the contract must not exceed in the case of materials or tools supplied to the workman the actual or estimated cost to the employer, or in the case of machinery, light, heat, or any other thing, a fair or reasonable rent or charge, having regard to all the circumstances of the case.

The Act draws a distinction between the workman who at once disputes the legality of a fine, and one who at the moment consents to or acquiesces in its deduction from his wages and then subsequently makes his objection. As the workman knows that the probable result of objecting to a fine will be dismissal he often acquiesces for the time being, and only makes his objection when he has been dismissed and can safely do so. The Act gives the

¹ *Hart v. Riversdale Mill Co., Ltd.*, 1928, 1 K.B. 176.

² *Chawner v. Cummings*, 8 Q.B. 311.

³ *Pritchard v. James Clay, Ltd.*, 1926, 1 K.B. 238.

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workman the general right to recover the sums deducted by the employer contrary to the Act so long as proceedings are begun within six months from the date of the deduction. If the workman at once disputes the legality of the fine and wins his case then he is entitled to recover the whole amount deducted, even in cases where the employer was right in imposing a fine of some sort but failed to show that the fine in question was fair and reasonable. On the other hand, if the workman proceeds after acquiescence then he can only recover the excess of the fine over and above what the Court may find to have been fair and reasonable having regard to all the circumstances of the case.

The only other section of the Act of 1896 which need be examined is section 6, which deals with the administration of the Act.

The factory and mine inspectors are responsible for seeing that the Truck Acts are properly administered, and in particular they can demand in writing that an employer shall produce to them contracts under the Act of 1896, and on the production of such contracts they may make copies of them.

The employer must keep a register of disciplinary fines, deductions, and charges, and this register can be inspected at any time by the inspectors.

Then the workman himself is given certain personal rights. A copy of any written contract which the workman or a shop assistant signs must be given to him on his becoming a party to it, or if the terms of the contract are contained in a notice or placard, then a copy of the notice or placard. Such a copy can also be demanded by the workman or shop assistant at any subsequent time free of charge.

Under the provisions of the Acts for setting up Wages Boards of various types, dealt with on pp. 39-78, the wages paid must be not less than the minimum rate, clear of all deductions, and the term deductions includes deductions for or in respect of any matter whatsoever, except those specifically mentioned. The enactments in those Acts do not differ materially, but only the Wages Councils Act, 1945, has been passed since the pay-as-you-earn principle has been introduced with regard to income tax. The relevant parts of section 13 of that Act, as being the latest and most elaborate enactment, are here set out.

Reference to remuneration is to be construed as a reference to the amount obtained in cash by the worker after allowing for the worker's necessary expenditure, if any, in connection with his employment, and clear of all deductions in respect of any matter whatsoever, except any deduction lawfully made (a) under the

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Income Tax Acts, the Unemployment Insurance Acts, 1935 to 1944, the National Health Insurance Acts, 1936 to 1941, or any enactment authorizing deductions to be made for the purposes of a superannuation scheme; (b) at the request in writing of the worker either for the purposes of a superannuation scheme or a thrift scheme or for any purpose in the carrying out of which the employer has no beneficial interest; or (c) in pursuance of, and in accordance with such a contract as is mentioned in section 1, 2, or 3 of the Truck Act, 1896.

It is also provided that "valued" benefits and advantages provided by the employer must not be benefits or advantages the provision of which is illegal by virtue of the Truck Acts, 1831 to 1940, and the value must be strictly adhered to. Further, none of those provisions are to be held to authorize the making of any deduction, or the giving of remuneration in any manner which is illegal by virtue of the Truck Acts, 1831 to 1940.

There is one trade and one trade only in which a special Truck Act is in force, viz. the Hosiery Manufacture (Wages) Act, 1874. The principle of the Act is in direct conflict with section 3 of the Act of 1896. From the preamble it is clear that it was specially passed to stop charges for the letting out by employers to workpeople of frames and machinery, though it contains some general provisions as well. Under section 2 all contracts to stop wages and all contracts for frame rents and charges between employers and workpeople are declared illegal. Then by section 3 a penalty is imposed upon any employer who bargains to deduct, or directly or indirectly deducts, from the wages of any of his workpeople any part of such wages for frame rents, and standing or other charges. On the other hand, section 4 puts a penalty on a worker who allows a frame or machine entrusted to him by his employer to be used without the employer's written consent in the manufacture of any goods or articles whatever for any other person.

In 1908 a Departmental Committee of the Home Office, after spending two years in taking evidence as to the working of the Truck Acts, issued a valuable report. Nothing has, however, been done to give effect to its recommendations. The Report contains some interesting discussions on important points of principle, and the reader who is interested will find a good deal of information on the matter on pp. 97-100 of the first edition of this book.

CHAPTER IV

STATUTORY FACILITIES FOR RECOVERING WAGES

If either party to a contract fails to carry out his part of the bargain, the law gives to the party aggrieved a right to sue the party in default for damages in a Court of Law. The main Court in this country is the High Court of Justice, sitting in London, and the Assize Courts held in the provinces when the judges go on circuit. Litigation in these Courts is subject to a certain amount of delay and to a good deal of expense, and a workman is in general well advised to keep clear of them. The recovery of wages in these higher Courts would be a procedure about as absurd as cracking nuts with a steam hammer. There are two alternatives to the High Court, one is the County Court, which deals with practically all civil cases, but with a statutory limit to the amount which can be claimed, and the other a Court of Summary Jurisdiction, often spoken of as the Police Court, which deals with minor criminal matters, but has also a fairly extensive civil jurisdiction. In the case of wages claims for £10 or under a Court of Summary Jurisdiction composed of a stipendiary (or paid) magistrate, or of two or more Justices of the Peace, is the more speedy and the less costly tribunal. The jurisdiction of a Court of Summary Jurisdiction was created by the Employers and Workmen Act, 1875, and the definition of a workman for the purposes of the Act has already been given in dealing with the Truck Act, 1887.

The jurisdiction of the County Court arises under the various County Court Acts which have been passed and at the present moment in the case of breaches of contract the limit of the amount which can be claimed is £100.

If the employer is an individual or a partnership, and he or they are insolvent and a receiving order has been made, then legal proceedings will in general be no longer possible, and the claim of a workman for his unpaid wages becomes a claim in the employer's bankruptcy. For reasons which are obvious a workman is given a preferential claim on the bankrupt's estate, but he shares this preferential position with certain other classes of creditors, and for a strictly defined amount of wages. Preference is given to all wages of any labourer or workman not exceeding £25, whether payable for time or for piece work, in respect of services rendered

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to the bankrupt during two months before the date of the receiving order.

On the same lines where the employer is a company registered under the Companies Act, 1929, and a winding-up order has been made, instead of being able to take legal proceedings for unpaid wages, a workman must claim in the winding up and will be a preferential creditor on the same lines as in the bankruptcy of his employer.

In the case of non-manual workers, such as clerks, etc., there is no remedy for wages or salary in a Court of Summary Jurisdiction. On the other hand, in the case of the bankruptcy or winding up of the employer, or the employing company, the preferential payments extend to £50 or four months' earnings, whichever is the smaller sum.

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TIME CONDITIONS IMPOSED BY THE STATE (COMPLETE AND PARTIAL PROHIBITIONS)

INTRODUCTION

The subject of this section will be all those conditions imposed by the State on the use of labour which have a time element. They will range from complete prohibitions to such matters as statutory holidays and statutory meal times. It will be most convenient to differentiate by sex and age as far as possible. The most complete classification recognizes four classes—viz. children, young persons, women, and men. The class of young persons is really a variable class, that is to say though the normal definition of a young person is one who is over school age and under eighteen, yet in particular cases the age of sixteen is the dividing line. There is in general a class interposed between the child at school and the adult, and the term "young persons" is the most convenient term to adopt for that intermediate class. A good deal of interest and value attaches to the various stages through which this legislation has passed, and to a considerable extent the subject will be treated historically.

There is a very close connection between this section and the two following sections on the State and the Safety of the Worker and the State and the Health of the Worker, and one reason for taking together all these regulations in which there is a time element is that it is not always easy to classify them. A prohibition against cleaning machinery in motion applied to persons of a certain age is obviously a safety regulation, while a prohibition against working on a lead process is obviously a health regulation, but a prohibition against working excessive hours may be both a safety regulation and a health regulation. Further, the demand for shorter hours arises nowadays not merely from the physical point of view. The working classes are now demanding leisure for its intellectual and emotional possibilities. It has seemed better, therefore, to make a separate section for these complete and partial prohibitions, leaving it to the reader to grasp the connection of the prohibition with the health, safety, or general welfare of the worker.

CHAPTER 1

HISTORY DOWN TO RECENT TIMES

Some of the worst horrors of the early years of the factory system were due to an application of the Elizabethan Poor Law Act of 1601, to purposes which were never contemplated by its authors. That Act was primarily directed to the suppression of the evil of mendicancy. We are apt to link together mendicancy and monasteries, but mendicancy survived the suppression of the monasteries by two or three generations. Thus a survey of Sheffield made in 1615 revealed the fact that out of its 2,207 inhabitants there were no less than 725 begging poor. These were not vagrants, but persons wholly or partially dependent on charity. An obvious solution was to train children in independence by apprenticing them to trades which would furnish a livelihood. Under the Act of 1601 it was one of the main duties of the overseers of each parish to apprentice children "whose parents shall not be thought able to feed and maintain" them and to keep them apprenticed till they were independent. At this time there was no object to be served in sending children away from their own parish unless some exceptionally good opening presented itself elsewhere, and the overseers were under no special temptation to use their powers under the Act except for the good of the children. The Act of Settlement of 1662 changed the situation for the worse. "In apprenticing boys the great thing was to find, not masters well able to teach their trade, but masters living in other parishes, since the apprentice obtained a settlement in the parish in which he was bound."¹

The introduction of the factory system created a great demand for child labour, which the overseers were only too ready to provide in the form of pauper apprentices. The preamble to the Health and Morals of Apprentices Act, 1802, recited that it hath of late become a practice in cotton and woollen mills and in cotton and woollen factories to employ a great number of male and female apprentices and other persons in the same building, in consequence of which certain regulations are become necessary to preserve the health and morals of such apprentices and other persons. The Health and Morals of Apprentices Act, 1802, was a failure from an

¹ *The English Poor Law System*. Aschrott and Preston-Thomas, p. 13.

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administrative point of view, but its provisions are nevertheless interesting. Night work between 9 p.m. and 6 a.m. was prohibited for apprentices, who corresponded roughly in age to two modern classes—viz. children and young persons. In the fifteen hours between 6 a.m. and 9 p.m. a twelve-hour day was allowed, but in the first four years of apprenticeship work was combined with instruction of a sort in reading, writing, and arithmetic.

The first legislation for children as distinguished from apprentices is to be found in two Acts of 1819 and 1820, which applied only to cotton mills, i.e. places where cotton wool was prepared and spun. Limited as was the scope of the operation of these Acts, they introduced some important principles—namely (a) absolute prohibition of child labour below a certain age, which in this case was nine years of age ; (b) a period of employment for older children which excludes night work, the details being that children between nine and sixteen were not to work between 9 p.m. and 5 a.m. ; (c) a limit to the day's work, in this case a twelve hours' day ; and (d) definite time allowances for meals, in this case a breakfast interval of half an hour. An Act of 1825 still limited to cotton mills is worth noticing on account of its introduction of a *shorter working day on Saturdays*, when only nine hours' work between 5 a.m. and 4.30 p.m. was permissible.

In 1831 twelve hours' work per day was made the maximum for all persons in cotton mills under the age of eighteen instead of sixteen, and night work was prohibited for all persons under twenty-one.

In 1833 a really important step forward was made, in that the Factory Act of that year was made applicable to practically all textile mills. The provisions of the Act embraced cotton, woollen, worsted, hemp, flax, tow, linen, and silk mills driven by steam or mechanical power, but expressly exempted lace-making and certain subsidiary industries connected with woollen goods.

So far as this Act followed the earlier Acts it would be wearisome to go into details, and only new points will be noticed. The new principles introduced were as follows :—

(1) There were now two classes between the ages of nine and eighteen, *and the distinction between "children" and "young persons"* is thus introduced. Children are those between nine and thirteen years of age. Their working hours were not to exceed nine hours a day or forty-eight hours a week. They were also to have two hours' schooling per day for six days a week, and in return for providing this the employer might stop a penny in the shilling from their wages towards the payment of the schoolmaster.

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The working hours of young persons between thirteen and eighteen were limited to twelve hours a day and sixty-nine hours a week, these hours being adopted from the Act of 1825.

(2) *Compulsory holidays were introduced* for children and young persons. The days selected for holidays were Christmas Day, Good Friday, and eight half-days.

(3) *An elementary form of a certificate of fitness for children was introduced.* This did not go beyond a certificate by a surgeon that the child had appeared before him and submitted to his examination, and was of the ordinary strength and appearance of a child of at least nine years of age.

This Act of 1833 is also distinguished by its introduction of the principle of Government inspection, but that is not the subject of this section, so that all that need be said is that from this time forward factory legislation becomes effective and progressive.

The next legislation to be noticed is Lord Ashley's Act of 1842, which was an Act "to prohibit the employment of women and girls in mines and collieries, and to regulate the employment of boys, and to make other provisions relating to persons working therein".

The prohibition of the employment of women and girls underground was absolute; in the case of boys there was to be no employment underground below the age of ten years. We also find in this Act the first legislation in which an age limit for work is fixed in order to secure safety for other workers as well as less strain on the person employed. Where a steam or other engine was in use at a mine for bringing persons up and down the shafts, it was not to be in the charge of a person other than a male of fifteen years of age or over.

In 1844 the entire Factory Act of 1833 was amended in several important matters relevant to the subject matter of this section.

(1) Certificates of fitness were put substantially on their present footing. The certifying surgeons were appointed by the inspectors. Separate certificates of age and fitness were required for children and young persons, and in each case the certificate had to state that the child or young person was not incapacitated by disease or bodily infirmity from working daily in the particular factory for the time allowed by the Act.

(2) *The hours of women over eighteen were for the first time limited,* and they were included with young persons.

(3) A substantial reduction was made in the hours for children. Instead of being allowed to work forty-eight hours and sent to school for twelve hours, they were only allowed to work thirty

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hours, and were to go to school for fifteen hour . These fifteen hours would, in general, be divided either into five hours' schooling on three days a week, or three hours' on five days, and there is in effect a division of the week or day into halves, one devoted to schooling and the other to work. This became known as the half-time system, which, with certain alterations of age limits, remained in force until the passing of the Education Act, 1918. This reduction in the hours of child labour was unfortunately accompanied by the retrograde step of allowing a child to go to work at eight years of age instead of nine.

(4) Children and young persons were prohibited from cleaning the mill gearing when it was in motion.

In 1845 a certain amount of protection was given to children, young persons, and women outside textile factories by the Print Works Act, 1845. This was the first application of legislation to textile works, and though printing was considered ripe for legislation, bleaching and dyeing were definitely excluded from the Act. The provisions of the Act were very half-hearted. Children under eight years of age were not to be employed. Between eight and thirteen years of age they were not to be employed between 10 p.m. and 6 a.m., and some restriction on their daytime employment was afforded by the necessity for producing a certificate of school attendance. This was a half-yearly certificate, and it had to show thirty days' school attendance of unspecified duration ; while two years later further attendance at school was secured by making the minimum school attendance 150 hours in the half-year, which is equivalent to thirty days' attendance of five hours a day. Over the age of thirteen the only restriction was in the case of females, and it took the form of a prohibition of night work. In 1847, after years of agitation, the hours in textile factories were reduced in the case of women and young persons to ten hours per day and fifty-eight per week, and this Act is commonly known as the Ten Hours Act. This Act was not as successful as its promoters hoped, because the ten hours could be worked at any time between 5.30 in the morning and 8.30 in the evening, and in busy times manufacturers kept their machinery running for the whole fifteen hours and women and young persons were worked in irregular relays, so that they did not get the benefit of the extra leisure, and the work of inspection was immensely complicated. " The system which they seek to introduce under the guise of relays is some one of the many plans for shuffling the hands about in endless variety, and shifting the hours of work and of rest for different individuals throughout the day, so that you may never have one complete set

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of hands working together in the same room at the same time." ¹ This practice led to the introduction in 1850 of the *normal twelve-hour period of employment* for women and young persons, with a fixed working day in summer from 6 a.m. to 6 p.m., of which ten and a half hours could be given to work and one and a half hours to meals. In winter the employer had the option of working the factory between 7 a.m. and 7 p.m.

Between 1850 and 1860 there was little legislation, and we need only note that the normal twelve-hour range of hours of employment was extended to children in 1853. In 1860 bleaching and dye works, which were excluded from the Print Act of 1845, were brought under the same kind of regulations, and during the next four years practically all the subsidiary processes in textiles were regulated.

In the same year, 1860, a further step was made as regards boy labour in mines. The age at which boys in general could work underground was raised to twelve, but in the case of boys who obtained a certificate that they could read or write, a sort of half-time system was introduced between the ages of ten and twelve, as these boys could go down the mine, provided they continued their education to the extent of putting in two days a week or three hours a day at school. Further, the age of persons in charge of the engines, which raised and lowered the workers in the mine, was increased from fifteen to eighteen years of age. Readers will have realized that up to this time there had been no general interference with hours of labour, and that restrictive legislation was confined to textile factories and works and to mines. There is evidence that in 1862 many children were entering the pottery trade as early as six, seven, and eight years of age. In other trades, which are now regarded as "dangerous trades", children were being kept at work in the busy season for fourteen hours a day and even longer. In 1864 six industries were brought under the existing Factory Acts on account of their being unhealthy trades. These six industries were the making of earthenware, lucifer matches, percussion caps and cartridges, and paper staining and fustian cutting.

In 1867 the whole question of the regulation of factory and workshop labour came up for consideration in Parliament and a great deal of fresh ground was covered by two Acts of Parliament—viz. the Factory Acts Extension Act, 1867, and the Workshop Regulations Act, 1867. The first Act was an Act for extending the existing Factory Acts to fresh industries, and the factory hours

¹ Report of Inspectors of Factories for 1849, *Parly. Papers*, vol. 22, p. 225.

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which have already been set out now became applicable to children, young persons, and women in "blast furnaces, copper mills, mills or forges in which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for making or converting steel; iron foundries, copper and brass foundries, premises in which power is used for the manufacture of machinery, metal articles and gutta percha; any premises in which paper glass or tobacco manufacture, letterpress printing or bookbinding is carried on; and finally any premises in which fifty or more persons are employed in any manufacturing process".¹ This particular Act is much complicated by additional restrictions in some industries and special relaxations in others. Thus, no boy under twelve and no woman was to be employed in melting or annealing glass, and no child under eleven was to be employed in grinding in the metal trades. On the other hand in several industries boys completely or partially passed into the adult class at sixteen and so were allowed to work at nights, or to work hours considerably in excess of the normal. This was the beginning of general legislation with special exceptions which even now makes English Factory Acts such a tangle.

The second Act, the Workshops Regulation Act, 1867, applied to establishments where less than fifty persons were employed, and where children, young persons, or women were at work, so long as they were not already included in existing factory legislation.

Under this Act no child under eight years of age was to be employed in any handicraft.

This is the first general prohibition of child labour. Children from eight years of age to thirteen could be half-timers, but with only ten hours' schooling per week instead of fifteen under the Factory Acts, and the period of employment had the wide range of 5 a.m. to 9 p.m.

The slowness which characterized the growth of legislation dealing with the evils of child labour was directly connected with the extraordinary apathy of the nation and Parliament in the matter of the education of children. As long as there were insufficient schools, and such schools as were in existence were inefficient, it was impossible to make out a really strong cause for restrictive legislation. It was easy for the occupiers of factories and workshops to say that they were the children's best friends, that they found children of eight years of age and upwards something to do and kept them out of mischief, and that there was some guarantee that the children they employed had some sort of schooling, whereas in

¹ Hutchins and Harrison, *History of Factory Legislation*, p. 168.

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the case of the unemployed child there was no guarantee of any schooling whatever. Until these two things could be said together, first, that the place for the child was in the school and not in the factory or workshop, and secondly, that there was a place in an efficient school for every child, adequate legislation to restrict child labour was not a practical possibility. "Factory legislation, as regards children, was doubtless kept back for generations for want of an effective Education Act, and it is rather interesting to notice the mutual reaction of the two causes; education is made the motive and object of restricting children's hours of work, and then the factory inspectors in their turn become promoters or furtherers of State Education, because they realize that only thereby can the restriction of hours become effective."¹ The Education Act, 1870, marks the opening of a new era. This Act was the somewhat delayed outcome of the Report of the Duke of Newcastle's Commission on Elementary Education which had reported in 1861. The findings of that Commission were briefly that only two-thirds of the children of the working classes were attending any school at all, and that as only a small proportion remained long enough under efficient teaching to get permanent benefit, it could not be said that more than one child in seven was getting satisfactory instruction. The object of the Education Act, 1870, was to provide a place in an efficient school for every child of school age, and steps were taken to ensure this provision within a year or two and to promote efficiency by State grants. There was still no general compulsory school attendance.

The earliest modification of hours of labour after the Education Act, 1870, is to be found in the two Mines Acts of the year 1872, the Coal Mines Regulation Act, 1872, and the Metalliferous Mines Regulation Act, 1872. It will be sufficient if we notice the provisions of the Coal Mines Act. The age for male labour underground was still retained at ten years, but for boys between ten and twelve years of age a limit of hours was introduced which was thirty hours per week under one system, and thirty-six hours under a second system, while attendance at school was raised from twelve hours a fortnight to twenty hours. A new class of male young persons between the ages of twelve and sixteen was introduced, and for this class there was a limit of ten hours' work per day and fifty-four hours' work per week.

For work above ground girls and women were eligible, and apparently for this reason the restrictions on labour above ground were more stringent.

¹ Hutchins and Harrison, *History of Factory Legislation*, p. 79.

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The children's class lay between the ages of ten and thirteen, and that of young persons between thirteen and sixteen. Hours of work for these classes were substantially the same as for the underground workers, but children, young persons, and women employed above ground were not allowed to work at nights (9 p.m. to 5 a.m.), on Sundays, or after 2 p.m. on Saturdays.

In 1874 the textile trades, after a twenty years' pause, were able to secure further restrictions on the hours of labour. After 1875 no child under ten years of age was to be employed in a textile factory, and childhood was to last until fourteen instead of thirteen, but subject to a provision that a child of thirteen who obtained an educational certificate would then pass into the class of young persons. To-day this educational certificate seems paradoxical, based, as it was, on the principle that the brighter the child, the sooner its education may come to an end. The actual working day of ten hours was once more restored by making a compulsory deduction of two hours for meals from the twelve hours' period of employment. As this two hours for meals enabled three breaks to be made in the working day, namely an hour for dinner and half an hour for tea and breakfast, the longest stretch of work allowed to children, young persons, and women without a break of at least half an hour was reduced to four and a half hours. The two hours for meals and the limit of continuous work to four and a half hours was for a long time the exclusive legal privilege of workers in textile factories.

In 1878 the existing Factory and Workshops Acts were swept away and replaced by a Consolidating Act. The distinction made in 1867 between places where less than fifty persons and places where fifty or more persons were employed was not continued. The various kinds of workplaces legislated for were either (1) textile factories, (2) non-textile factories, (3) workshops employing women, young persons, and children, (4) women's workshops, or (5) domestic workshops. For women and young persons the stricter legislation for textile factories than for non-textile factories and workshops was continued, but in regard to children the latter places were brought up to the level of the textile factories by the simple enactment of section 20 that a child under the age of ten years should not be employed in a factory or workshop.

The recognition of women's workshops, "conducted on the system of not employing therein either children or young persons," was a step brought about by a wave of individualistic idealism which believed that where adults were alone concerned matters of hours ought to be left to the good sense and increasing intelligence

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of the people themselves. The hours for these workshops were any twelve hours, less one and a half hours for meals, which the employer might select between 6 a.m. and 9 p.m. The Act of 1878 was mainly a Consolidating Act, and the only other new point that need be mentioned was a prohibition of the employment of children and young persons in certain branches of the white lead and other similar industries.

The Act of 1878, with its prohibition of child labour in factories and workshops under the age of ten, was in 1880 supplemented by an educational enactment which made school attendance compulsory on all children under that age.

No further advance with regard to children was made till 1887, when the Coal Mines Regulation Act prohibited the work of children under the age of twelve years either below ground or above ground in coal mines as defined by the Act.

Up to this time there was no interference with the hours of adult male labour.

CHAPTER II

RECENT LEGISLATION FOR CHILDREN

So far it has been convenient to deal with children, young persons, and women together (there has been nothing to say about men), but now it will be more convenient to divide the subject into two parts, dealing with children in this chapter, and with women and young persons in the next chapter.

Until the passing of the Children's Act, 1932, there had only been one instance of the inclusion of young persons with children, and that was in regard to street trading. Bye-laws regulating this could be made not only for children but also for young persons under the age of sixteen. The Act of 1932 contained most important extensions of the power of making bye-laws, by bringing under it other occupations besides street trading, and young persons up to the age of eighteen. In 1933 a Consolidating Act was passed and details as to this Children's Act, 1933, will be found later on in this chapter.

The young persons dealt with in this chapter are therefore limited to those for whom provision is made in existing legislation as to children.

In 1889 there was passed the first Act which dealt with the Prevention of Cruelty to Children, and under that heading dealt with the employment of children in public entertainments on the lines of prohibiting their employment below a certain age except by licence. The present law on this subject is contained in the Children's Act, 1933, sections 22, 23, and 24.

As regards the employment of children in factories and workshops, there was a gradual raising of the age at which employment became legal. In the Factory and Workshop Act, 1891, a provision was inserted that after 1892 no child should be employed below the age of eleven years, and by the Factory and Workshop Act, 1901, the age of twelve years was substituted for the age of eleven years.

There was similar progressive legislation with respect to mines, the age limit being higher here than for factories and workshops. In 1900 the Mines (Prohibition of Child Labour Underground) Act prohibited child labour underground in both coal mines and metalliferous mines below the age of thirteen years. Then in 1911,

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as far as coal mines were concerned, the age was raised to fourteen years.

In 1903 a new departure was made by the passing of the Employment of Children Act, 1903, which dealt with the whole question of children's employment outside factories, workshops, mines, and places of public entertainment.

Children are defined as boys and girls under the age of fourteen. The main provisions of that Act were as follows :—

- (1) Night work for children was in general prohibited.
- (2) Half-timers under the Factory and Workshop Act, 1901, were not to be employed in any other occupation.
- (3) A child was not to be employed to lift, carry, or move anything so heavy as to be likely to cause injury to the child.
- (4) A child was not to be employed in any occupation likely to be injurious to his life, limbs, health, or education, regard being had to his physical condition.
- (5) Street trading was prohibited in the case of children under eleven years of age.

Further, the Act gave power to local authorities to legislate by bye-laws for the further protection of children in their districts on lines which are substantially the same as those now in force.

The Education Act, 1918, made a great step forward by abolishing the half-time system. Under the provisions of section 14, which is still in force, no child who is bound to attend school may be employed—

- (a) in any factory or workshop to which the Factory and Workshop Acts, 1901 to 1911, apply ;
- (b) in any mine to which the Coal Mines Act, 1911, applies ;
- (c) in any mine or quarry to which the Metalliferous Mines Acts, 1872 and 1875, apply.

In 1920 an Act was passed to give effect to the international agreement arrived at by the Washington Conference. This was entitled the Employment of Women, Young Persons, and Children Act, 1920. That Act forbids the employment of any child under the age of fourteen in any industrial undertaking, and the definition of that term in the case of children covers four classes of undertakings, which may be summarized as (a) Mines, etc. ; (b) Manufactures, including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind ; (c) Works of Construction ; and (d) the Transport of passengers or goods. Obviously much of this legislation had already been enacted

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in the Education Act, 1918, in rather different phraseology. It will be noticed that this international legislation is limited to "industry", and does not touch "agriculture" or "commerce".

It is interesting to note that from the passing of these last two Acts, children are not specifically legislated for in factory legislation, and the only reference to children in the Factories Act, 1937, is in section 143 which provides that for the purposes of any proceedings under this Act in respect of the employment of children in contravention of section 14 of the Education Act, 1918, or section 1 of the 1920 Act, or any other enactment prohibiting the employment of children which is incorporated with the Factories Act, 1937, references to young persons are to be construed as including references to children.

In 1921 the existing legislation on education was consolidated by the Education Act, 1921. Part VIII of that Act dealt with the employment of children and young persons. In its turn Part VIII was repealed and in a strengthened form re-enacted in the Children and Young Persons Act, 1932, and that was repealed by the Consolidating Act of 1933, which has already been mentioned.

The Education Act, 1918, used the phrase "no child who is bound to attend school". School attendance was governed by section 46 of the Education Act, 1921, which placed a duty on the local education authority to make bye-laws for compulsory attendance between the age of five years, and such age not being less than fourteen, nor more than fifteen, as might be fixed by the bye-laws. But it was the policy of the Board of Education to sanction only such bye-laws as fix the upper age limit at 14. The Education Act, 1940, raises the school leaving age to 15 as from the appointed day, 1st April, 1947. It should be noted that under section 138 of the Act of 1921, if a child who is attending a public elementary school attains any year of age during the school term, that child shall not for the purpose of any enactment or bye-law be deemed to have attained that year of age until the end of the term. This puts an end to what was at one time a common practice, namely the withdrawal of a child from school on its birthday. At the present time a boy or girl remains a "child" until the end of the term in which he or she reaches the age of fifteen years.

The following is a summary of Part II of the Children and Young Persons Act, 1933. Under section 18 no child can be employed as a general rule (a) so long as he is under the age of twelve years, (b) before the close of school hours on any day on which he is required to attend school, (c) before 6 a.m. or after 8 p.m. *on any*

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day, (d) for more than two hours on any day on which he is required to attend school, (e) for more than two hours on any Sunday, (f) to lift, carry, or move anything so heavy as to be likely to cause injury to him.

These general rules are subject to modification by bye-laws made by a local authority. These modifications cover both permitted exemptions from the general rules and additional restrictions.

A local authority may make bye-laws with respect to the employment of children, and any such bye-laws may distinguish between children of different ages and sexes and between different localities, trades, occupations, and circumstances, and may contain provisions

- (a) Authorizing (i) the employment of children under 12 by their parents or guardians in light agricultural or horticultural work ; (ii) the employment of children for not more than one hour before the commencement of school hours on any day on which they are required to attend school.
- (b) Prohibiting absolutely the employment of children in any specified occupation.
- (c) Prescribing (i) the age below which children are not to be employed ; (ii) the number of hours in each day or week for which, and the time of day at which they may be employed ; (iii) the intervals to be allowed to them for meals and rest ; (iv) the holidays or half-holidays to be allowed to them ; (v) any other conditions to be observed in relation to their employment.

This power of making bye-laws does not differ in substance from the power contained in earlier legislation, and the first edition of this book contained a summary of the bye-laws made in Birmingham.

CHAPTER III

RECENT LEGISLATION FOR WOMEN AND YOUNG PERSONS

NOTE.—Throughout this chapter the terms Home Office, Home Secretary, and the Secretary of State must be read in the light of the note on p. 25.

The history of legislation for young persons and women as regards hours of work, etc., from 1878 onwards need not be given at any great length. The Factory and Workshop Act of 1891 prohibited women's labour during the four weeks after childbirth. From 1883 onwards there was a great extension of detailed rules for dangerous industries. By the Factory and Workshop Act, 1891, this kind of legislation was definitely withdrawn from Parliament as the direct legislating body and placed in the hands of the Home Office, which was given the power of making statutory rules and orders, subject to the power of Parliament to reject them if it thought fit. The Factory and Workshop Act, 1901, was the next step forward.

But factory legislation was still at the stage when the piecemeal character of its development was only too obvious, so that the Act of 1901 was very complicated. To give instances: for fixing the period of work, the hours for Saturday work, the allowance for meal times, and the maximum period of continuous employment, places of employment were still in four different classes with their separate rules. Its advances were mainly in matters directly concerning health and safety. In 1916 a war time measure introduced compulsory "Welfare orders". The 1920 Act for giving effect to the Washington Convention has already been mentioned. This Employment of Women, Young Persons, and Children Act, 1920, also put the two-shift system on a permanent footing. Other special Acts like the White Phosphorus Matches Prohibition Act, 1907, the Women and Young Persons (Employment in Lead Processes) Act, 1920, and the Factory and Workshop (Cotton Cloth Factories) Act, 1929, marked advances in the regulation of special industries. Then after too long an interval the Factories Act, 1937, by Part VI set up a standard of hours, etc., which was largely based on the best practices already obtaining in industry.

The first point to be dealt with is to draw the line between young persons and adults. In general under the Factories Act a young person passes into the adult class at the age of eighteen

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years, but there are some important matters in which young persons under sixteen are differentiated from those of that age or over.

Let us begin with the child who has left school and proposes to work in a factory. The first step is to obtain a certificate of fitness.

Certificates of fitness under the Factories Act, 1937, are required for young persons under the age of sixteen years.

Under section 99 of that Act a young person under the age of sixteen years must not be employed after the expiration of such period, not being less than seven days, as may be prescribed, unless he has been examined by the examining surgeon and certified by him to be fit for that employment. *S.R. and O.*, 1938, No. 534, has prescribed fourteen days as the limit of employment without a certificate of fitness. A new provision of the Act of 1937 authorizes the examining surgeon to issue a provisional certificate available for not more than twenty-one days.

It will be noticed that the certificate is not a general certificate of fitness for factory work which can be taken from factory to factory, but one issued to the employer for the employment of the young person in his factory, and a fresh certificate must be obtained by every new factory employer until the young person reaches the age of sixteen.

Conditions may be inserted in the certificate as to the nature of the work in which the young person is to be employed, and for re-examination after a prescribed interval. The Act of 1937 also introduced a strictly limited extension under which if the examining surgeon so directs any condition may continue to have effect after the age of sixteen, but in any case must cease at the age of eighteen.

When re-examination takes place the certificate may be varied or revoked. In the case of a refusal or revocation of a certificate the examining surgeon must, if so requested by the parent of the young person, give the parent in writing the reasons for the refusal or revocation.

The factory occupier must, when required, produce to an inspector at the factory in which a young person is employed, his certificate of fitness.

The Secretary of State may make rules prescribing (a) the manner in which and the place at which examinations are to be conducted ; (b) the form of certificates ; (c) facilities to be afforded by occupiers of factories for examinations ; and (d) other desirable matters.

This power has been exercised by *S.R. and O.*, 1938, No. 535, being the Young Persons (Certificates of Fitness) Rules, 1938.

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The Act of 1937 has introduced for the first time a provision for making the school medical record of the young person available for the examining surgeon. There is an interesting history behind this. In a discussion of the question how far the system of certification really attained its purpose the first edition of this book (1923) contained this passage: "What is obviously wanted is that the information collected during the school life of the young person should be available for the certifying surgeon," and this was followed by a citation from the Annual Report for 1913 of the Chief Inspector of Factories of a passage testifying to the happy result of two instances where the certifying surgeon was also school medical officer. In the second edition of this book (1935) this sentence appeared: "The report of the chief inspector of factories for the year 1933 says that since 1911-12 school medical officers and Juvenile Committees have been encouraged by the Board of Education and the Ministry of Labour to co-operate with the certifying surgeons to the fullest possible extent, and the desirability of such co-operation in the interests of young persons is generally recognized, but owing to inherent administrative difficulties it has not hitherto been found possible to devise a method of co-ordination of universal application. Further consideration is being given to the matter." These administrative difficulties seem at last to have been surmounted. Under the Act of 1937 it is the duty of every local education authority to arrange for their officers to furnish on the application of the examining surgeon, for his confidential information, such particulars as to the school medical record of a young person and such other information in their possession relating to the medical history of a young person as he may require to assist him to carry out effectively his duties, and the examining surgeon must in any case where he is doubtful whether or not to issue a certificate make such application.

The making of rules for securing the observance of this provision is in the hands of the Minister of Health or of the Ministry of Education acting on his behalf.

The position of factories in which mechanical power is not used has in form been altered by the Act of 1937, but there is no substantial change in the law. Under the Act of 1901 such workplaces were in general exempt from the rules as to obtaining certificates of fitness but the Secretary of State could by reason of special circumstances by order bring any class of such workplaces under those rules, and nine classes of workshops were in fact legislated for. Under the Act of 1937 such workplaces come within the provisions as to obtaining certificates of fitness, but the Secretary

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of State may by regulation exempt from the operation any class or description of such workplaces.

We can now pass to the provisions of the Factories Act, 1937, as to hours of work and holidays. The claim has sometimes been made that this Act has put an end to the complicated classification of workplaces, with each class having its own enactments on many points, which is to be found in the earlier legislation. This is not entirely true as there are still special enactments for textile factories, and certain other minor classes of workplaces, but as regards hours of work and holidays a very great simplification has been achieved.

Section 70 lays down general conditions for every woman and young person employed in a factory under three headings—

- (a) the total hours worked, exclusive of intervals allowed for meals and rest, must not exceed nine in any day, nor forty-eight in any week ;
- (b) the period of employment must not exceed eleven hours in any day, and must be between 7 a.m. and 8 p.m. and on Saturdays between 7 a.m. and 1 p.m. ;
- (c) work must not go on continuously for more than four and a half hours without an interval of at least half an hour for a meal or rest. Where an interval of at least ten minutes is allowed in the course of a spell of work, the spell may be increased to five hours.

There are two subsidiary provisions :

- (d) the period of employment and intervals allowed for meals must be the same for all women and young persons employed in the factory. Experience has shown that the detection of infringements of the main provisions becomes very difficult without this provision ;
- (e) no woman or young person may be employed during an interval allowed for meals or rest.

For young persons under the age of sixteen there are special provisions. The evening limit for their period of employment is 6 p.m. instead of 8 p.m. Their weekly limit of hours of work is forty-four instead of forty-eight. As regards the shorter working week the Secretary of State has power to make regulations increasing this in any class or description of factory but not above the normal forty-eight hours. This power may only be exercised if all the following conditions are satisfied : (1) the industry would be seriously prejudiced by the forty-four hour limit ; (2) the increased hours would not be likely to be injurious to the health

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of the young persons ; (3) their employment is qualifying them for processes in which older persons are employed and is likely to lead to their permanent employment in the industry. The Secretary of State must satisfy himself on these three points by directing an inquiry to be held, and receiving a favourable report. An example of the exercise of this power is to be found in *S.R. and O.*, 1940, No. 611, being the Weekly Hours of Young Persons under sixteen in Factories (Various Textile and Allied Industries) Regulations, 1940. Between the ages of fifteen and sixteen these young persons might work up to forty-eight hours per week. As a result of a fresh inquiry this order lapsed on 31st December, 1946. Another instance is the Weekly Hours of Young Persons under sixteen in Factories (Printing and Bookbinding) Regulations, 1939 (*S.R. and O.*, 1938, No. 169). The hours of work are extended to forty-five per week, but not in the case of those under section 98.¹

Later sections define what is employment in a factory. It covers, besides manufacturing processes, incidental work such as cleaning, oiling, etc. The one exception is the work of the charwoman who cleans the factory, but does not do any cleaning which is incidental to any process. An apprentice is deemed to be employed in the factory. A young person who works in a factory, whether for wages or not, in collecting, carrying, or delivering goods, carrying messages, or running errands is deemed to be employed in the factory, but if such young person is employed mainly outside the factory then the provisions as to hours of work and certificates of fitness do not employ. The Young Persons (Employment) Act, 1938, which is dealt with later, covers the case of such an outsider. The choice of periods of employment within the limits of the working day is given to the factory occupier, and it is his duty to fix up a notice in the prescribed form specifying (a) the period of employment for each day of the week for the women and young persons employed ; and (b) the intervals allowed for meals or rest. These times may be different for different days of the week, but when fixed can only be altered by giving a prescribed notice. A factory inspector can by notice in writing name a public clock by which these times are to be regulated.

Overtime is allowed for women and young persons, sixteen years of age and over, but is strictly limited. The first limit applies to the factory, which must not work overtime in more than twenty-five weeks in any calendar year, and in any one of those weeks the overtime must not exceed six hours, and the average amount of overtime for those weeks must not exceed four hours, the aggregate

¹ See pp.133-4 .

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overtime having a limit of one hundred hours in the year. For individuals working hours may be increased from nine to ten per day, and the period of employment increased from eleven to twelve hours. For young persons the period of employment must be kept within the normal limits, but women may work up to 9 p.m. instead of 8 p.m. except on Saturdays.

The Secretary of State has power to make regulations either prohibiting or restricting the overtime employment of young persons in any process which will prejudicially affect their health.

The Secretary of State has also power, after consultation and inquiry, to make such regulations as will secure the reduction of overtime employment in any class or description of factory, where this can be done without serious detriment to the industry.

In the case of a factory subject to seasonal or other special pressure the Secretary of State may by regulations allow an increase of overtime for *women* in not more than eight weeks in the year, and increase the annual aggregate from one hundred hours to not more than 150 hours. The Secretary of State may increase the weekly overtime, and the number of overtime weeks allowed in the year for a factory (a) by regulations as respects any class or description of factory, if he is satisfied that owing to the exigencies of the trade carried on the increase is necessary; (b) by order as respects any factory, if he is satisfied that the increase is necessary through unforeseen pressure of work, breakdown of machinery or plant, or other unforeseen emergency.

Examples of the use of this power will be found in Overtime Regulations made for Aerated Water Manufacture (*S.R. and O.*, 1938, No. 727), Biscuit Manufacture (*S.R. and O.*, 1938, No. 1528), the making of Chocolate and Sugar Confectionery (*S.R. and O.*, 1938, No. 1245), Florists (*S.R. and O.*, 1938, No. 1163), the making of Glass Bottles and Jars (*S.R. and O.*, 1938, No. 1612), Laundries (*S.R. and O.*, 1938, No. 728), Bread, Flour Confectionery, etc. (*S.R. and O.*, 1939, No. 509), Dyeing and Cleaning (*S.R. and O.*, 1939, No. 642), Ice-cream making (*S.R. and O.*, 1939, No. 857), Net Mending (*S.R. and O.*, 1939, No. 1490), Bottling of Beer, Wine, and Spirits (*S.R. and O.*, 1940, No. 729).

The employment of persons in different parts of a factory or of different sets of persons in different processes may, subject to conditions prescribed by the Secretary of State, be treated for overtime purposes as if it were employment in different factories. This power has been exercised by the Factory Overtime (Separations of different parts or sets) Regulations, 1938 (*S.R. and O.*, 1938, No. 640). Differentiation must be by a certificate describing the

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separate parts, or sets, or processes, and containing an opinion from the Inspectors that the arrangements are satisfactory.

Where owing to the nature of the business carried on the Secretary of State is satisfied that the limitation of overtime for the factory as a whole is inappropriate, he may by regulations dispense with the factory restrictions and substitute for it restrictions on individual overtime on a somewhat stricter basis, viz. : (a) no woman may be employed overtime in the factory for more than seventy-five hours, and no young person for more than fifty hours in any calendar year ; and (b) no woman or young person may, except as otherwise provided in regulations, be employed overtime in the factory for more than six hours in any week or more than twenty-five weeks in any calendar year. This power has been exercised by the Factory (Individual Overtime) Regulations, 1938, being *S.R. and O.*, 1938, No. 1228. It should be noted that the occupier must hold a certificate from the Inspector that the arrangements for securing compliance with the Regulations are satisfactory.

Before employing any woman or young person on overtime on any day the occupier of the factory must send in writing to the inspector for the district, and also enter in his own register prescribed particulars of the overtime employment. He must also post a notice in the factory containing the prescribed particulars.

To make these provisions really effective there is a prohibition on employment inside and outside a factory on the same day in the business of the occupier. The only exception is that a woman or young person of sixteen years of age and upwards may be so employed in a shop outside the period of employment, but any such employment must be treated for the purposes of the Act (including the provisions as to overtime) as employment in the factory. Nor is a woman or young person employed on any day inside the factory allowed to be given work or to take out work to be done at home or elsewhere on such a day, as such a person is deemed to be employed outside the factory on the day on which the work is given or taken out.

In general a woman or young person must not, during any part of the intervals allowed for meals or rest, remain in a room in which a process is then being carried on.

In general a woman or young person must not be employed on Sunday in a factory, and if employed in any factory on any other day of the week must not be employed on Sunday about the business of the factory or in any other business carried on by the occupier.

The occupier of a factory must allow to every woman and young person employed in the factory the following whole holidays. In

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England these days are Christmas Day, Good Friday, and every bank holiday. By not less than three weeks' notice the occupier may substitute another weekday for any of these days. It is quite usual to substitute Easter Tuesday for Good Friday. Substituted holidays in England and the holidays in Scotland must be so fixed as to leave at least half of the holidays between 15th March and 1st October. In Scotland the six weekdays can be fixed by the occupier subject to a three weeks' notice, and to the right given in burghs to the Town Council to fix two of the holidays, which must not be less than three months apart.

Women holding responsible positions of management who are not ordinarily engaged in manual work are not within these provisions.

In the event of accident, or breakdown of machinery or plant, or other unforeseen emergency, the Secretary of State may by order suspend as respects any factory these provisions as to hours and holidays for such period as may be specified, but so far only as may be necessary to avoid serious interference with the ordinary working of the factory, and not so as to conflict with any enactment giving effect to an international convention.

We now pass to special exceptions in favour of two well established trade practices which conflict in some respects with the general provisions of the Act :—

(a) Male young persons who have attained the age of sixteen may in six specified industries be employed on shifts outside the normal hours on work which is by reason of the nature of the process required to be carried on continuously day and night. Those industries are : (1) the smelting of iron ore ; (2) the manufacture of wrought iron, steel, or tin-plate ; (3) processes in which reverberating or regenerative furnaces, necessarily kept in operation day and night in order to avoid waste of material and fuel, are used in the smelting of ores, metal rollings, metal tube and rod making, and similar classes of work ; (4) the galvanizing of sheet metal or wire ; (5) the manufacture of paper ; and (6) the manufacture of glass.

The restriction as to no Sunday work is modified by allowing a shift to end on Sunday morning not later than 6 a.m. or to begin on Sunday evening not earlier than 10 p.m., and where the system is one of four shifts of not more than eight hours each there may be a Sunday shift between 6 a.m. and 10 p.m. Three general conditions are laid down :

- (1) No young person may work more than six turns in a week ;
- (2) the interval between turns must not be less than fourteen hours ;

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(3) work between midnight and 6 a.m. is not allowed in two consecutive weeks. There is a proviso that as respects young persons employed on the four-shift system or in the manufacture of glass these three conditions may be modified by regulations made by the Secretary of State.

Instead of a weekly limit of forty-eight hours' work there is a limit of fifty-six hours for the week, but only 144 hours may be worked in any continuous period of three weeks.

Further, the young person, although sixteen years of age, must have a certificate of fitness, which must provide for his examination at intervals not exceeding six months.

This provision is elaborated in the Night-work of Male Young Persons (Medical Examinations) Regulations, 1938, being *S.R. and O.*, 1938, No. 608.

Provision is also made for the employment in the same industries of male young persons over sixteen years of age on weekdays on a system of shifts (between 6 a.m. and 10 p.m.) subject to the same conditions as to number of turns, intervals between turns, and total hours of work.

(b) Factories operating the five-day week have exceptional rules. Ten hours a day may be worked in a twelve-hour period of employment and for women and young persons of sixteen years of age overtime employment may extend the working hours to ten and a half. If no overtime is worked on any of the five days, then on the sixth day overtime may be worked up to a limit of four and a half hours. In some cases it may be a convenience for one part of a factory to work a five-day week while the rest is working the six-day week. This can be done if the occupier gets the separate parts reckoned as separate factories. The Secretary of State has a general power to do this. An instance of its exercise covering this point is the Factory (Separation for Certain Purposes) Regulations, 1939 (*S.R. and O.*, 1939, No. 1888). It is on the same lines as *S.R. and O.*, 1938, No. 640, on p. 126.

It may be stated here that the Factories Act, 1937, is silent about the two-shift systems for women and young persons sixteen years of age and over. Provision for this was made by the Employment of Women and Young Persons Act, 1936. This latter Act embodied the experience of about twenty years. During the 1914-18 war experiments in working two shifts were made and then in 1920, under section 1 of the Women, Young Persons, and Children Act, 1920, it became possible for an application of an employer and the majority of the work people concerned made jointly to the Secretary of State to be followed by an order

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authorizing the two-shift system in that factory. There was still a good deal of criticism as to the wisdom of this step, as the two-shift system involving late and early travelling, and upsetting in other ways the orderly routine of home life had from that point of view manifest disadvantages. After a thorough inquiry into the advantages and disadvantages of the system the Act of 1936 was passed and its main provisions were as follows. The Secretary of State may authorize the two-shift system on the application of the occupier of any factory, or workshop, or particular department for women and young persons of sixteen years and over. The period of employment is 6 a.m. to 10 p.m. on weekdays other than Saturday when it is 6 a.m. to 2 p.m. A shift is limited to eight hours. If the factory, etc., is working the five-day week then shifts may extend to ten hours, with a limit of forty-eight hours in any week and eighty-eight in two successive weeks. In existing factories the workpeople must be consulted and a secret ballot vote taken of those concerned, and there must be a majority in favour of the application. These conditions are reasonable as the workers were taken on to work normal factory hours. In the case of a newly established factory which is intended to have the two-shift system from its start and to make it a permanent institution, then consultation with the workers is dispensed with. No worker who objects need take work at that factory. The Secretary of State may lay down conditions safeguarding the welfare of the workers in such matters as the provision of suitable accommodation for clothing, of facilities for meals, and of transport to and from work.

The authorization may be revoked on account of breaches of the conditions imposed or of abuses which have arisen. Section 2 of the Act of 1920 was repealed.

A further series of exceptions as to hours of work are also contained in sections 83 to 95 of the Factories Act, 1937.

The Secretary of State if satisfied that the exigencies of the trade require it, may by regulations in the case of any class of factory, or by order in the case of any factory, allow the period of employment for women and young persons in the whole factory, or any part of it, or for any set of persons, and either for the whole year or less, to begin earlier than 7 a.m. but not before 6 a.m. This power has been exercised by the Bread, Flour, Confectionery, and Sausage Manufacture (Commencement of Employment) Regulations, 1939 (*S.R. and O.*, 1939, No. 510). Under these regulations work may begin at 6 a.m.

Subject to such conditions as the Secretary of State may by regulations prescribe the provisions as to simultaneous hours for

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meals and rest are not to apply (a) to persons employed in any process on which work requires by its nature to be carried on continuously ; (b) to different sets of persons, either employed on different processes, or necessarily divided into sets for taking meals in a canteen provided and maintained by the occupier to the satisfaction of the district inspector, or such different sets of persons as may be approved by the inspector. The Secretary of State may by regulations also exempt any class of factory from the provisions mentioned above on being satisfied that such exemption is justified by special circumstances.

An example of this is to be found in the Factory (Intervals for Women and Young Persons) Regulations, 1938 (*S.R. and O.*, 1938, No. 607). Exemption is given to the following classes of factories or industries: bread and flour confectionery, repair shops for motor vehicles or cycles, the making of wearing apparel, florists, developing or printing of photographs.

Male young persons employed in the manufacture of wrought iron, steel, or tinplate, or of paper or glass are exempt from the provisions prohibiting employment during intervals allowed for meals or rest or the use of certain rooms during such intervals.

Subject to such conditions as the Secretary of State may by regulations prescribe the provisions as to the use of rooms during intervals allowed for rest or meals, are not to apply to (a) persons employed in any process on which work requires by its nature to be carried on continuously ; (b) where different sets of persons have different intervals for meals or rest ; (c) as respects any interval allowed in the course of a spell of continuous employment. He has also the power by regulations to exempt classes of factories because of special circumstances.

Male young persons of the age of sixteen and upwards who are employed with men and whose continuous employment is necessary to enable the men to carry on their work, may work a morning spell of five hours instead of four and a half hours.

Subject to such conditions as the Secretary of State may by regulations prescribe male young persons employed as part of the regular maintenance staff of a factory, or by a contractor are excepted from the provisions of the Act as to hours of employment, overtime, use of rooms during intervals, Sunday employment, and annual holidays.

The Secretary of State may by regulations substitute some other day for Saturday as the short day, where it is proved to his satisfaction that the customs or exigencies of the trade carried on in any class of factories require this substitution to be made. If the

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regulations are made for newspaper printing offices or for factories in which the nature of the work requires it to be carried on for six full working days in the week then they may authorize the substitution of some other day for Saturday in respect of some of the women and young persons employed.

On the same lines the customs and exigencies of the trade are a ground for a special exception authorizing the occupier of a factory to allow all or any of the annual whole holidays on different days to any of the women and young persons employed in it, or to any sets of these women and young persons instead of on the same days.

Where the occupier of a factory is a person of the Jewish religion, or a member of a sect regularly observing the Jewish Sabbath, then he may employ his co-religionists on Sunday, and Saturday will rank as Sunday. The occupier may choose Friday or Sunday for his short working day.

Then follow special provisions for four specified industries:—

(1) *Laundries*.—For the purpose of meeting without overtime pressure of work which recurs on particular days of the week, women may on two weekdays, other than Saturday, work ten hours per day in a twelve-hour period of employment beginning not earlier than 6 a.m. and ending not later than 9 p.m. But they must not exceed the normal hours of work allowed in the week. If the occupier avails himself of this exception the Secretary of State may by regulations make necessary or expedient modifications in the provisions requiring the period of employment and intervals allowed for meals and rest to be the same for all women and young persons, and prohibiting their employment in any such interval.

(2) *Manufacture of bread or flour confectionery*, including meat and fruit pies or sausages.—This special provision follows the wording used for laundries.

The Laundries, Manufacture of Bread and Flour Confectionery, and Sausages (Hours and Intervals) Modification Order, 1938 (S.R. and O., 1938, No. 729), contains the modifications which have been made in pursuance of the powers set out in this and the preceding paragraph.

(3) *The preserving, canning, or curing of fish* or the preparing of fish for sale, or *the preserving or canning of fruit or vegetables* during June, July, August, and September.

Subject to such conditions as the Secretary of State may by regulations prescribe, the general conditions as to hours of employment of women and young persons, notices fixing hours of employment, overtime, employment, prohibition of use of rooms during

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intervals, and annual holidays are not to apply to the employment of women and young persons sixteen years of age and over in those processes where they require to be carried out without delay in order to prevent goods from being spoiled.

The Fruit and Vegetable Preserving (Hours of Women and Young Persons) Regulations, 1939 (S.R. and O., 1939, No. 621), sanction the following exceptions: Young persons may work fifty-four hours per week, and women sixty hours per week. There must be no work between 10 p.m. and 7 a.m., and there must be an interval of eleven hours between work on consecutive days. There are certain emergency provisions as well.

(4) *Factories*, or any class of factory, *in which cream, butter, or cheese is made*, or fresh milk or cream is sterilized or otherwise treated before being sold as such. For these the Secretary of State may make regulations varying the provisions as to hours of employment and notices thereof, overtime, prohibition of the use of rooms during intervals, and of Sunday employment, and the annual holidays, so far as they relate to women and young persons of sixteen and over, and such regulations may make different provision for different processes or different periods of the year. In general weekly hours are not to exceed fifty-four, but in factories where cheese is made for a specified part only of the year the weekly hours may extend to sixty.

Then follows a section dealing with the protection of the health or welfare of women or young persons employed overtime or under special exceptions. If it appears to the Secretary of State that any special provision is required for this purpose he may by regulations make the adoption of such a provision a condition of their employment.

An occupier of a factory not less than seven days before he avails himself of any special exception must serve on the district inspector and post in his factory notice of his intention so to avail himself, as from a specified date, and he must keep the factory notice posted up. The notice must contain particulars as to the period of employment, the intervals to be allowed for meals or rest, and the annual holidays, so far as they differ from the normal.

Under section 98 of the Act there is a separate code of rules for the following classes of young persons: (a) those employed in collecting, carrying, or delivering goods, carrying messages or running errands, *being employed* in the business of a factory wholly or mainly *outside the factory*, or employed in connection with any business carried on at a dock, wharf, or quay for which the Act legislates or any warehouse, not being part of a factory or covered

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by the Shops Act, 1930, by a person having the use of such dock, wharf, or quay ; and (b) employed on any process carried on at such dock, wharf, quay, or warehouse or in, or in connection with, the loading, unloading, or coaling of any ships in any dock, harbour, or canal.

These rules may be summarized as follows :—

- (a) Weekly hours of work are not to exceed forty-eight, and for those under sixteen years, forty-four.
- (b) A spell of continuous work up to five hours is allowed, but where the hours of work include work from 11.30 a.m. to 2.30 p.m. an interval of not less than three quarters of an hour must be allowed between those hours for dinner.
- (c) There must be one short working day (ending at 1 p.m.) in the week, which need not be Saturday, and it must be duly notified.
- (d) For young persons, sixteen years of age and over, overtime is allowed on occasions of seasonal or special pressure, or in case of emergency. The limits are six hours in any week, fifty in any calendar year ; overtime may only be worked in twelve weeks of the calendar year.
- (e) There must be a break of eleven consecutive hours in the day reckoned from noon to noon, which must include the hours from 10 p.m. to 6 a.m.
- (f) The employer must keep prescribed records.
- (g) There must be no Sunday work, and the normal annual holidays must be given.
- (h) The Secretary of State may by regulations make further conditions to safeguard the welfare and interests of these young persons.

The employer may by giving notice to the inspector, bring himself under the general code instead of this special code.

The Factories Act, 1937 (Adaptations under section 98) Order, 1938, *S.R. and O.*, 1938, No. 533, gives these young persons further protection.

This will be a convenient place at which to set out the provisions of the Young Persons (Employment) Act, 1938. This Act covers the following employments or two or more of them taken together :—

- (1) Employment in the collection or delivery of goods, or carrying, loading, or unloading goods incidental thereto.
- (2) Employment at business premises in carrying messages or running errands, the work being wholly or mainly outside the premises.

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- (3) Employment at a residential hotel or club in carrying messages, etc., and the like work.
- (4) Employment at a newspaper publication office carrying messages, etc.
- (5) Employment at places of public entertainment (including baths) carrying messages, etc., and the like work.
- (6) Operating a lift connected with mechanical power, elsewhere than in a private dwelling.
- (7) Operating (or helping in it) cinematograph apparatus.
- (8) Employment at receiving offices for a laundry, dyeing or cleaning works, or other factory.

The fact that part of the young persons' employment is in connection with a retail trade or business carried on in a hotel or theatre does not take him out of Act so long as he is wholly or mainly engaged in the employments listed above, but if his hours of employment are regulated by the Factories Act, 1937, or the Coal Mines Acts from 1911 onwards, or the Metalliferous Mines Acts, 1872 and 1875, or if his employer has exercised his option to apply the provisions of the Shops Acts to him, then he does not come within the Act. Employment of a young person in agriculture or in a shop is not within the Act.

The code of rules is the same as that contained in section 98 of the Factories Act. There is, however, a different rule for Sunday work. Under the Act now being dealt with the rule is that a young person must not be employed on a Sunday unless he receives a whole holiday on a weekday, in the week before or after the Sunday, being a weekday which is not a short day.

Hours of work in retail shops can now be dealt with. The Shops Act, 1912, mainly protected shop assistants as a class irrespective of age or sex, and on that footing falls within the scope of the next chapter. It did, however, limit the hours of persons under eighteen to seventy-four per week inclusive of times for meals. The Shops Act, 1934, marks a great advance on the Shops Act, 1912, and its provisions as to the hours of young persons are as follows :—

No young person under the age of eighteen is to be employed about the business of a shop for more than forty-eight working hours in any week. Overtime is allowed for young persons between the ages of sixteen and eighteen on occasions of seasonal or exceptional pressure of work within the following limits : (a) Overtime may only be worked in the shop in six weeks of a year whether such weeks are consecutive or not ; (b) the maximum amount of overtime for each individual is fifty working hours in the year, of

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which not more than twelve hours may occur in any one week. Where a young person is employed in more than one shop, or partly in a shop, and partly in a factory or workshop, both periods of employment are to be taken into account.

Where the working hours are divided into spells in such a manner as to deprive a young person of reasonable opportunities for instruction and recreation the Home Secretary may make regulations under which working hours will be counted as the period from the start in the morning till the finish in the evening, exclusive only of (a) such intervals, whether for rest or meals or otherwise, and (b) time allowed for attendance at such instructional courses, as may be specified in the regulations.

Night-work is not allowed for young persons under a provision which secures an interval between mid-day on one day and mid-day on the next day of at least eleven consecutive hours which must include the period from 10 p.m. to 6 a.m. This means that if a young person is kept working until 10 p.m. work cannot be resumed the next morning before 9 a.m., and if on any day work is started at 6 a.m., it must have ceased not later than 7 p.m. on the previous day, with similar provisions for intermediate cases. These provisions as to hours apply to any place where retail trade is carried on, e.g. a stall, even if it is not technically a shop.

In certain trades there are special provisions. Boys between sixteen and eighteen employed in connection with the collection and delivery of milk, bread, or newspapers, may start work at 5 a.m.; and if they are waiters serving meals for consumption on the premises they may work between 10 p.m. and midnight. In the catering trade an alternative system may be adopted. Its chief features are (a) provision for fortnightly limitation of hours under which sixty hours may be worked in one of the two weeks, but not more than ninety-six in the fortnight; (b) the restriction of overtime to eight hours in any fortnight. Where a caterer prefers to work under the ordinary shop hours the rule as to overtime being limited to six weeks in the year is not to apply to young persons engaged in serving meals or drinks. There is an alternative scheme restricted to young persons between sixteen and eighteen employed in shops selling accessories for aircraft, motor vehicles, and cycles. This is based on a limitation of three weeks' work to 144 hours, with liberty to work up to fifty-four hours in any one of the three weeks.

Record keeping is an essential feature of the administration of an Act of this character. The occupier of a shop where young persons are employed has two choices: (a) he must keep in a prescribed

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form a record of the hours worked by, and of the intervals allowed for rest and meals to, every young person employed about the business of the shop, and particulars of all overtime must be separately entered ; or (b) he may exhibit a notice in the prescribed form specifying the hours of work, and the intervals for rest and meals. In this case there need only be recorded time worked outside the specified hours, and such time will be reckoned as overtime unless it is in substitution for part of the specified working hours, and both the time not worked and the substitute time are entered on the record.

The provisions of the Shops Act, 1912 and 1934, apply to every young person who is wholly or mainly employed about the business of a shop or in connection with any retail trade or business not in a shop.

The position as to employment in mines can be stated quite shortly.

We have already seen that it is illegal for any girl or woman to be employed in or allowed to be for the purpose of employment in any coal mine below ground. This rule is now to be found in section 91 of the Coal Mines Act, 1911. Section 3 of the Metalliferous Mines Act, 1872, contains a similar prohibition of female labour below ground in any metalliferous mine. In work above ground in connection with coal mines, women and boys and girls up to the age of sixteen years have rules in common.

Under section 92 of the Coal Mines Act, 1911, women and boys and girls under sixteen are not to be employed above ground for more than fifty-four hours in any one week or more than ten hours in any one day. Night-work between 9 p.m. and 5 a.m. is prohibited, and so also is Sunday work and work on Saturday afternoons after 2 p.m. The maximum period of continuous employment without an interval of at least half an hour for a meal is five hours, and if the employment exceeds eight hours in any one day, the interval or intervals for meals must amount to at least one and a half hours. There is an absolute prohibition of employment in moving railway wagons, or in lifting, carrying, or moving anything so heavy as to be likely to cause injury to the woman, boy, or girl employed.

The Coal Mines (Employment of Boys) Act, 1937, introduces a new rule for the employment at night of boys below ground. There must be specified in a notice affixed at the mine by the manager a period of at least seven consecutive hours between 10 p.m. and 6 a.m. and during that period no boy may be employed in or allowed to be for the purpose of employment in that coal mine below ground.

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The employment of women and young persons under sixteen in metalliferous mines and quarries is now governed by four sets of regulations, namely the Metalliferous Mines General Regulations, 1938 (*S.R. and O.*, No. 630), the Quarries General Regulations, 1938 (*S.R. and O.*, No. 632), and two sets of regulations as to First Aid. We are concerned here only with Part III of both sets of General Regulations which are drawn on the same lines and may be summarized as follows :—

No young person under sixteen years of age and no woman is to work for more than fifty-four hours per week, or ten hours per day. They are not allowed to work between 9 p.m. and 5 a.m., or on a Sunday, or after 2 p.m. on a Saturday. There must be a twelve hours' interval between work on two consecutive days. They must not be on continuous work for more than five hours unless there is half an hour's interval, or for more than eight hours unless there is one and a half hour's interval. Young persons under sixteen must have certificates of fitness. For the women and young persons under sixteen there is a prohibition of work such as moving railway wagons, or heavy lifting.

We now come to the general question of night-work for women and young persons. We have seen how night-work has been dealt with by specific legislation in the case of factories and workshops and coal mines, but we must also notice the more general provisions of section 1, sub-section 3 of the Employment of Women, Young Persons, and Children Act, 1920. This is to the effect that no young person or woman shall be employed at night in any industrial undertaking except as allowed by the conventions. The conventions are given in the Appendix to the Act, and women and young persons are dealt with separately. In the case of young persons the definition of industrial undertaking is the fourfold definition which applies to child labour, covering (a) mines, etc. ; (b) manufacturers, etc. ; (c) works of construction ; and (d) transport. In the case of women transport is omitted from the definition. In the case of young persons there are certain special exceptions, which have for the most part already been dealt with on p. 128. A Home Office circular contained the following summary of the *alterations* made by the Act. " The practical effect of these provisions is : (a) to raise the age for night-work from fourteen to sixteen years in the case of blast furnaces, iron mills, paper mills, and glass works ; and (b) to prohibit night-work for any young persons in letterpress printing works, electrical stations, and china clay works."

The Home Office circular was, of course, only dealing with factories and workshops, and the effect of the Act as an amendment

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of existing English law. There is a general exception "in cases of emergencies which could not have been controlled or foreseen, which are not of a periodical character and which interfere with the normal working of the industrial undertaking", and there is the power of suspension by Government "when in cases of serious emergency the public interest demands it". In the case of English law these general exceptions maintained the legality of certain exceptions to be found at that time in the Factory and Workshop Act, 1901.

"Night" is defined as "at least eleven consecutive hours including the interval between 10 p.m. and 5 a.m." In the case of coal mines and bakeries there are special definitions.

In the case of women there are no special exceptions, but the general exceptions are as follows: (a) in cases of *force majeure* when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character; (b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night-work is necessary to preserve the materials from certain loss; (c) in industrial undertakings which are influenced by the seasons, and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

The Hours of Employment (Conventions) Act, 1936, cancels the restrictions contained in the Act of 1920 so far as women are concerned and enacts a new set on similar lines. Women holding responsible positions of management in coal mines are excepted from the restrictions as to night-work in coal mines.

CHAPTER IV

RECENT GENERAL LEGISLATION, INCLUDING THAT AS TO ADULT MALES

We now come to the position of adult men over the age of eighteen years in respect of hours of labour.

For a long time no protection was given to men, either because they were assumed after eighteen to be physically fit for all occupations without limit, or because they were considered morally capable, either by collective action as trade unionists or individually, to look after themselves. This doctrinaire view of the position of men had to give way before the undoubted fact that in one industry, namely railway transport, men were working such long hours and getting so unduly fatigued that the travelling public were in danger. In 1889 a section was introduced into the Regulation of Railways Act, 1889, under which it became the duty of every railway company to make periodical returns to the Board of Trade as to the persons in the employment of the company *whose duty involves the safety of trains or passengers*, and who are employed for more than such number of hours at a time as may be from time to time fixed by the Board.

The object of this enactment obviously is not to protect the signalman or train driver from undue fatigue, but to protect the public from the possible consequences in the form of railway accidents which might result from such overwork. The former object was a matter which at that time was left to be fought out between the National Union of Railwaymen and the railway companies, while as to the latter public opinion was ripe for action by the Board of Trade. When motor transport became established similar considerations led to the insertion in the Road Traffic Act, 1930, of section 19, which deals with hours of labour and is prefaced by the words "*with a view to protecting the public against the risks which arise in cases where the drivers of motor vehicles are suffering from excessive fatigue*". As contrasted with consideration for the public, care for the position of the adult male workers themselves is to be found only in the case of coal mines and the pottery industry. As regards retail shops the provisions as to half-holidays and meal times apply irrespective of sex. In further detail, legislation for adult males has been as follows.

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The Railway Regulation Act, 1893, set up a cumbrous system under which the Board of Trade could limit excessive hours of work for the ordinary railway servant. This section excluded railway clerks and the workmen employed in the workshops of a railway company. To set these provisions going the initiative had to come from the railway servants, or any class of them, or from a Trade Union acting on their behalf, and took the form of a representation to the Board of Trade that the hours of labour of those servants or of that class (or in any special case of any particular servants) engaged in working the traffic, were excessive, and did not provide sufficient intervals of rest between the periods of duty, or sufficient relief in respect of Sunday duty. The Board of Trade was bound to inquire into the representation, and if it appeared to the Board that there was reasonable ground for complaint, it had to make an order on the company to submit to the Board within a specified period such a schedule of time for the duty of the servants, or of any class of the servants of the company, as would in the opinion of the Board bring the actual hours of work within reasonable limits, regard being had to the circumstances of the traffic and the nature of the work.

If the company either failed to comply with the order to submit a schedule of reasonable hours, or having submitted the schedule, failed to enforce its provisions, the Board of Trade might refer the matter to the Railway and Canal Commissioners, who could make a final order on the company. It was not until this stage was reached that there was any legal liability on the railway company to work to the schedule. Failure to comply with an order of the Commissioners or to enforce a schedule of hours approved by them rendered the company liable to a fine of £100 per diem.

Under this Act the hours of railway servants were slowly improved. More recently the strength of the railway Trade Unions has considerably increased, and very considerable improvements both in wages and hours have been secured by direct negotiations between the Unions and the Railway Companies.

Under section 19 of the Road Traffic Act, 1930, the drivers of public service vehicles which carry passengers, of locomotives or motor tractors, and of motors constructed to carry goods, have the benefit of the following provisions: (a) the maximum continuous period of work is five and a half hours, and periods are continuous unless separated by at least half an hour for rest and refreshment; (b) in every twenty-four-hour period reckoned from 2 a.m., eleven hours are to be the maximum amount of work; (c) the hours of work are to be so arranged as to give ten consecutive hours of rest

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in twenty-four hours calculated from the commencement of any period of driving, but nine hours may be substituted for ten hours in one twenty-four-hour period, if in the next twenty-four-hour period twelve hours are allowed in the place of ten.

Under section 33 of the Road and Rail Traffic Act, 1932, the Minister of Transport is given power on application being made to him by certain interested bodies and after referring the matter to the Industrial Court for advice, to vary these hours. This power has been exercised by *S.R. and O.*, 1935, No. 491, and *S.R. and O.*, 1937, No. 490. The alterations made by these orders do not depart in principle from the scheme of hours provided by the Road Traffic Act, 1930.

The first definite statutory regulation of hours for male labour is to be found in the Coal Mines Regulation Act, 1908. As has already been pointed out, the special circumstances of mining have marked it out for experiments in industrial legislation. The Act of 1908 prohibited a workman from being below ground in a mine for the purpose of his work and of going to and from his work for more than eight hours during any consecutive twenty-four hours. As, however, in a mine a certain number of men must go down first to insure safety, etc., and must come up last, the following classes were allowed to be below ground for nine and a half hours, namely firemen, examiners, deputies, on-setters, pump minders, fan men, and furnace men.

An extension of hours was allowed by the Act on not more than sixty days in the year, but not exceeding one hour per day, and every occasion on which this extension is used must be recorded in the register of the mine.

The Government, by means of an Order in Council, may suspend the operation of the Act in a period of emergency.

The Coal Mines Act, 1919, further reduced the hours of underground labour by substituting seven hours for eight hours in the general part of the Act of 1908, and eight hours for nine and a half hours in the case of the excepted classes. It also provided for a further reduction of hours to six hours and seven hours respectively after 13th July, 1921, provided that a resolution was carried in both Houses of Parliament after the year 1920 to the effect that the economic conditions of the mines justifies this reduction. In 1926 the working hours were once more increased to eight per day by allowing overtime on every day instead of on sixty days in the year. In 1930 this perpetual overtime was reduced to half an hour instead of an hour, thus making a seven-and-a-half-hour day. Special local agreements were also provided for.

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The Factory and Workshop Act, 1901, contained no direct interference with the hours of adult male labour, but, of course, so far as male labour was dependent on that of women and young persons what limited the one limited the other. So far as male labour is employed in dangerous and unhealthy industries within the scope of section 76 of the Act of 1901, its hours of labour could be regulated by the Special Orders made under that section.

The same is true of the Factories Act, 1937, and the Special Regulations which can be made under section 60 of that Act.

There were several orders which provided for the medical examination of adult males, and the suspension from work of those found to be suffering from disease, but this class of order is the subject of separate consideration in Section V.

The Special Order for the pottery industry went farthest in the regulation of male industry. Besides a monthly examination by the surgeon of all persons employed in any of the lead processes included in Part I of the Schedule, and the prohibition of the employment of suspended persons without a certificate of permission to work, definite hours are laid down for certain classes of male adult labour. No adult male who is employed as a dipper, dipper's assistant, or ware cleaner may be employed in the factory in any capacity for more than forty-eight hours in any week, unless the proportion of his time spent on lead processes does not exceed eight hours a day and thirty hours a week, in which case he may work on other work not involving contact with lead up to a limit of fifty-four hours a week. No adult male who is employed as a glost placer may be employed in the factory in any capacity for more than fifty-four hours in any week. A very limited amount of overtime is allowed.

A recent experiment in limiting night-work for men in the baking trade proceeds with the utmost caution.

The Bakery Industry (Hours of Work) Act, 1938, begins with a general prohibition of employment in any factory in the manufacture of bread or flour confectionery between 11 p.m. and 5 a.m. It then sets out three different schemes, in all of which some breach of this general prohibition is allowed, and the occupier of a factory may by giving a week's notice to the district inspector and to his employees, adopt one of these schemes :—

Scheme I.—A five-night week is allowed.

Scheme II.—Work allowed from 4 a.m. and on Friday nights.

Scheme III.—In half of the weeks in a six-week period night-work may be allowed.

Biscuit factories are not included in the Act.

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The Secretary of State ¹ may by regulations act in two matters :
(a) he may provide that the restrictions imposed by the Act shall not apply or shall be modified in respect of dough mixing or oven firing, and in cases of emergency or in the case of public holidays, or to meet seasonal demands in holiday resorts.

(b) On the application of any Wages Council, or Joint Industrial Council, or the like body, he may make rules as to night-work for persons doing baking but not under a contract of service.

Enforcement of the Act is secured by the incorporation by reference of the enforcement sections of the Factories Act, 1937.

The Shops Act, 1912, and the Shops (Hours of Closing) Act, 1928, do not prescribe actual maximum hours of work, but by means of a statutory half-holiday, statutory intervals for meals, and closing orders, working hours are fairly stringently regulated.

The half-holiday is secured by a provision that on at least one weekday in each week a shop assistant is not to be employed about the business of the shop after 1.30 p.m. Unless the shop comes under a closing order the occupier of a shop has the right to fix the day of the week on which his shop assistants are not to be employed after 1.30 p.m., and may fix different days for different shop assistants. Where a local authority makes a closing order for one afternoon a week, the shop is actually closed to the public at 1 p.m., but a series of shops are scheduled as unsuitable for a weekly half-holiday, and in these cases only the individual half-holiday is possible.

In the great majority of shops customers are not available before about 9 a.m. in the morning, and the Shops Act, 1912, does not contain any provisions as to the hour at which shops are to be opened. In the matter of evening shopping the general public could not be trusted to be reasonable, and local authorities were given power by the Shops Act, 1912, to fix the evening hour of closing on the several days of the week either throughout its area, or in any specified part of it, and either for all shops or for shops of a specified class, but it could not fix an hour for closing earlier than 7 p.m. on any day of the week.

The Shops (Hours of Closing) Act, 1928, provides that every shop shall be closed for the serving of customers not later than 9 p.m. on one "late day" of the week, and not later than 8 p.m. on any other day of the week. The late day is to be Saturday unless the local authority fixes some other day, but such other day must not coincide with the weekly half-holiday. Local authorities may still make closing orders under the Shops Act, 1912, imposing

¹ See note on p. 25.

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earlier closing hours. There are special provisions for confectionery and tobacco shops, exhibitions, shops at holiday resorts and sea-fishing centres. The Home Secretary may suspend the operation of the Act during the Christmas season or on other special occasions.

Under the Shops Act, 1912, the intervals for meals are arranged as follows. The maximum period of continuous employment without an interval of at least twenty minutes for a meal is six hours. Under section 9 of the Shops Act, 1934, in the case of young persons six hours is reduced to five hours, or five and a half hours on the day of the weekly half-holiday. No person may be employed from 11.30 a.m. to 2.30 p.m. without an interval within that period of at least forty-five minutes for dinner, and no person may be employed from 4 p.m. to 7 p.m. without an interval of at least thirty minutes for tea. It will be seen that the six hours' continuous employment is just possible, though in practice not very probable. Thus an assistant could be sent to dinner at 11.30 or 11.45, returning to work at 12.15 or 12.30 and leaving off for tea at 6.15 or 6.30. If the shop assistants have their meals in shifts, so as to keep the shop continuously open, then, unless the first shift for dinner has the last tea time instead of the first time, no one will actually get six hours' uninterrupted labour. Under the Shops Act, 1913, there is an alternative scheme for shop assistants in refreshment houses under which the maximum number of weekly hours is sixty-five, exclusive of meal times, but in return for these hours there must be thirty-two whole holidays on weekdays in the year and twenty-six whole holidays on Sundays.

The impression the writer gets from these figures is that the inclusion of male shop assistants in these provisions has been bought at some cost to the female shop assistants, who are at some disadvantage as compared with female labour in factories and workshops.

By the Shops Act, 1936, the Shops Act, 1912, is extended to include premises where the business of lending books or periodicals for gain is carried on.

Recently the Sunday opening of shops has been the subject of legislation.

The Shops (Sunday Trading Restriction) Act, 1936, contains a general prohibition of the serving of customers on Sunday in any shop. It then enumerates the kind of shops to which it is not to apply, viz. (a) those for the sale of intoxicating liquors; (b) shops where meals and refreshments supplied for consumption on or off the premises but fried-fish shops are not excluded; (c) shops selling cooked provisions; (d) shops for selling table waters, sweets, and

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ice cream ; (e) florists and greengrocers ; (f) dairies ; (g) chemists shops ; (h) shops selling requisites for aircraft, carts, cycles, etc. ; (i) tobacconists ; (j) newspaper shops ; (k) certain bookstalls at railway and other termini ; (l) stalls at art galleries, etc. ; (m) shops for passport photos ; (n) shops for sport requisites at sports grounds ; (o) premises at farms, stables, inns, etc., selling fodder. Post Offices and undertakers may also be open for business. A local authority may grant partial exemption orders valid up to 10 a.m. for the sale of certain foodstuffs such as bread, fish, and groceries.

There are special rules for holiday resorts.

In the case of Jews and others who regularly observe the Jewish Sabbath as the weekly rest day Saturday may be substituted for Sunday. The London Sunday street markets and certain East End districts have special rules. Shop assistants who are employed for more than four hours on Sunday must be given a compensatory holiday in the week over and beyond the statutory half holiday, and must be off duty on two other Sundays in the month. Where Sunday work amounts to four hours or less then a similar compensatory half holiday must be given in the week. This latter provision does not apply to licensed premises, refreshment houses, milk roundsmen, post offices, and chemist shops.

The Act contains the usual provisions as to posting notices of permitted hours, and keeping records of hours worked.

The Act is made to rank as one of the group of Shop Acts.

By *S.R. and O.*, 1937, No. 271, more detailed rules are laid down on such matters as notices regarding the business of mixed shops, Jewish shops, records of Sunday employment and holidays, etc.

In the regulations as to dangerous industries as well as in the Factories Act, 1937, there are certain absolute or partial prohibitions which could be included in this chapter but they are better reserved for the section dealing with the health of workers.

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INTRODUCTION

The prevention of accidents at work is one of the most important problems of industry. Unceasing attention is being given to the subject, and some progress has been made, but fluctuations in trade and the occurrence of two major wars are upsetting factors. Statistical figures have been available (a) under the Workmen's Compensation Acts, and (b) under the provisions for the notification of accidents of a certain standard of seriousness. Under the Workmen's Compensation Acts, returns were made for seven groups, namely shipping, factories, docks, mines, quarries, constructional work, and railways. In 1913 the fatal accidents were 3,748 and the non-fatal 476,920. In 1919 the fatal accidents were 3,293 and the non-fatal 365,176. In 1933 the fatal accidents were 2,072 and the non-fatal 359,971. The trade depression of the early "thirties" was still an important factor. In 1937 the fatal accidents were 2,370 and the non-fatal 486,495.

The problem has been attacked for many years now by the insertion of provisions for safety in the Factory Acts themselves and in the Special Regulations made for Dangerous Trades under section 79 of the Factory and Workshops Act, 1901,¹ by the framing of a Safety Code for Mines under the Mines Acts, by making the employer liable to pay damages for negligence, or compensation for accidents which really arise out of the work,² and by the notification and investigation of accidents with a view to the discovery and institution of further preventive measures.

As long ago as 1913 the Report of the Chief Inspector of Factories put in a plea for further voluntary effort in the shape of Safety Committees, and the following passage from that report is of interest: "The experience of several British and American firms shows that, in addition to legal safeguards, reduction of accidents

¹ Now replaced by section 60 of the Factories Act, 1937.

² Under the National Insurance (Industrial Injuries Act), 1946, the employer pays a contribution to a state insurance fund.

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can best be secured by obtaining the interest and co-operation of operatives and officials through Safety Committees. The number and constitution of such committees will depend on the size of the factory and the nature of the industry. . . . The duties of these committees are to study the causes of accidents, to suggest and devise suitable means for preventing them, to keep careful records, to make frequent inspection of the machinery and plant, and to note any defects and dangers. After some experience the principal Safety Committee usually drafts a code of safety rules applicable to the particular factory. . . . Factories in which this problem has been thus attacked show a marked reduction in casualties."

After the 1914-18 war this kind of voluntary movement received considerable impetus from the formation of Joint Industrial Councils under the Whitley scheme, and from the increasing practice of appointing Welfare Workers. It should not be difficult to link on voluntary schemes for reducing accidents to existing legal safeguards, and the mode of connection is suggested by a provision which appears in the Special Order for the pottery industry and which is primarily addressed to the kindred matter of the prevention of industrial disease. This provides that a person or persons shall be appointed whose duty it shall be to see to the observance throughout the factory of the regulations, and to carry out systematic inspection of the working of all the regulations in the departments for which they are individually responsible. He must keep in the factory a book in which he must record any breach of the regulations or any failure of the apparatus (fans, etc.) needed for carrying out the provisions that he may have observed, or that may have been brought to his notice within the preceding twenty-four hours, together with a statement of the steps taken to remedy such defects or to prevent the recurrence of such breach. Such a person would be a combination of a safety engineer and a private inspector of the factory.

Valuable information about Safety Organization is contained in the Report for 1933 of the Chief Inspector of Factories and Workshops. It appears that Safety Committees or other forms of safety organization have been formed at the great majority of iron and steel, heavy engineering, iron founding, and shipbuilding works, but many of these were inactive in 1933. In many works there is a growing tendency to replace Safety Committees by a full-time Safety-Officer, and this has led to a decided improvement in some cases. In other industries there has been an increase in the number of Safety Committees set up, and good results are reported, particularly in some of the larger works. The National

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Federation of Building Trades Employers have made an effort to organize a scheme of voluntary safety arrangements, with a Central Safety Committee working in conjunction with regional and local associations in the building industry. The Port of London Authority and the (London) Ocean Shipowners have each formed joint "Safety First" Committees; and Safety Committees were continuing in operation at Liverpool, Manchester, Plymouth, the South Wales ports, Leith, and Dundee.

Theoretically the payment of compensation should be a check on accidents. In practice the growth of accident insurance, by distributing the cost over the whole industry, largely nullified this expected result of the Workmen's Compensation Acts. Schemes for "merit rating" under which the employer who takes all reasonable steps to safeguard his employees pays less for accident insurance than the employer who is indifferent to such matters were propounded, and were even endorsed in the Report of a Departmental Committee, but nothing of importance was done.

Now that the Workmen's Compensation Acts have been superseded by a national insurance scheme other methods must be devised, but we shall see later that the matter has not been lost sight of in recent legislation.

Some little space has been given to the work of preventing accidents, because from this point onwards attention must be mainly given to the details of existing legal safeguards, and the general effect on the reader may be to make him feel that surely this mass of detailed legislation is enough, and that the present position is satisfactory. Immense progress has been made during the last few years in regulations applicable to classes of factories, workshops, and mines, but much remains to be done in educating individual employers and workers in the importance of "safety first".

CHAPTER I

SAFETY REGULATIONS

[In this chapter the reader must bear in mind recent transfers of ministerial functions as stated in the notes on p. 25 and p. 40.]

We shall begin the consideration in detail of the provisions for the safety of workers by examining the legislation for factories, and then pass on to the legislation for mines and railways. A little over a century ago certain provisions for safety, such as the prohibition of the cleaning of mill gearing in motion by a child or young person, and the fencing of special parts of the machinery were inserted in the Factory Act, 1844. The inspector might give notice that machinery was dangerous, and if the employer disputed this, the matter went to arbitration. These provisions have gradually been elaborated and the present regulations are to be found in the Factories Act, 1937, and in Regulations made under that Act or its predecessors.

The first point to be dealt with will be the dangers of machinery in factories. Certain machines, or parts of machinery, will be dangerous (a) to the persons using them ; (b) to the persons cleaning them ; and (c) to the passer-by. It will not be necessary to adopt this as a rigid classification, but it is as well to have it constantly in mind.

Certain enactments are for the special protection of women and young persons, or young persons only. These will be found in their appropriate context.

The Factories Act, 1937, introduces new standards of safety, and in doing so uses new terms which are interpreted in detail in section 152.

The first of these terms is "prime mover". This means every engine, motor, or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel, or other source. In general every flywheel directly connected to any prime mover, and every moving part of any prime mover must be securely fenced, but in the case of an electric generator motor, and rotary converter, and any flywheel directly connected thereto, fencing is not required if it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced.

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The head and tail of every water wheel and of every water turbine must be securely fenced (section 12).

The next term is "transmission machinery". This covers every device (i.e. shafts, wheels, pulleys, driving belts) by which the motion of a prime mover is transmitted to or secured by any machine or appliance.

Every part of the transmission machinery must be securely fenced unless its position or construction makes it as safe as it would be if securely fenced.

Every room or place where work is carried on must have efficient appliances for cutting off promptly the power from the transmission machinery in that room or place.

No driving belt when not in use is to be allowed to rest or ride upon a revolving shaft forming part of the transmission machinery.

Efficient mechanical appliances must be provided, maintained, and used to move driving belts to and from fast and loose pulleys forming part of the transmission machinery, and must be such as to prevent the driving belt from creeping back on to the fast pulley.

When the Secretary of State is satisfied that owing to special circumstances any of the requirements of these two provisions is unnecessary or impracticable he may by order direct that that requirement shall not apply.

As regards machinery other than the kinds already dealt with, every dangerous part of it must be securely fenced unless it is in such a position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced.

If the nature of the operation makes the use of a fixed guard impracticable, then a device must be provided which automatically prevents the operator from coming into contact with the dangerous part of the machines. The Secretary of State may make regulations directing the use of a particular type or description of safety device which either prevents the exposure of a dangerous part of machinery whilst in motion or stops a machine forthwith in case of danger.

A special sub-section brings under the rules for secure fencing any part of a stock bar which projects beyond the head stock of a lathe.

Generally the Secretary of State may, as respects any machine or any process in which a machine is used, make regulations requiring the fencing of materials or articles which are dangerous while in motion in the machine.

The examination, lubrication, etc., of machinery in motion is

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allowed on condition that the work is being done by male persons of eighteen or over, and in compliance with such conditions as the Secretary of State may have laid down by regulations. The regulations now in force are *S.R. and O.*, 1938, No. 641, *S.R. and O.*, 1942, No. 2116, and *S.R. and O.*, 1946, No. 156. These bring into being a "machinery attendant" registered as such and holding a certificate from the factory occupier. He must be sufficiently trained and aware of the dangers of his work.

All fencing or other safeguards must be of substantial construction and constantly maintained and kept in position while the dangerous parts are in motion or use, except when any such parts are necessarily exposed for examination and for any lubrication or necessary adjustment. In construing these sections the Courts have put the occupier's duty very high. The fencing or guard must make the machinery safe for use by careless or even disobedient workers. It must be such as to prevent the operator coming into contact with the dangerous part of the machinery.¹ If the machinery cannot be rendered safe apparently it must not be used.²

The construction of new machinery intended to be used in a factory and driven by mechanical power must comply with certain detailed requirements for insuring safety, and any person who sells or lets on hire a machine to which the section applies which does not comply with these requirements is liable to a fine not exceeding £100.

Every fixed vessel, structure, sump, or pit of which the edge is less than 3 feet above the adjoining ground or platform must, if it contains any scalding, corrosive, or poisonous liquid, either be securely covered or be securely fenced to at least that height. Where by reason of the nature of the work neither secure covering nor secure fencing is feasible then all practicable steps must be taken to prevent any person from falling in.

The Secretary of State may by order exempt from these requirements any class of vessel, etc., in the case of which he is satisfied that the requirements are unnecessary or inappropriate.

Self-acting machines are a constant source of danger and this has been recognized for over fifty years. The following provision applies to any factory erected after the 31st December, 1895, to any factory or part of it reconstructed after the passing of the Factories Act, 1937, and to any extension of a factory after the same date. No traversing part of any self-acting machine and no material carried on it shall, if the space over which it runs is as

¹ *Nicholls v. Austin (Leyton), Ltd.*, 1946, 62 T.L.R. 320 (H.L.).

² *Withers v. Army and Navy Stores, Ltd.*, 1943, 59 L.T.R. 35.

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space over which any person is liable to pass, be allowed on it outward or inward traverse to run within 18 inches from any fixed structure not being part of the machine. In the case of any self-acting spinning mule the traversing carriage may run to a point 12 inches distant from any part of the headstock of another such machine.

All practicable steps must be taken by instructions to the person in charge of the machine and otherwise to ensure that no person employed shall be in the space between any traversing part of a self-acting spinning mule and any fixed part of the machine towards which the traversing part moves on the inward run except when the machine is stopped with the traversing part on the outward run.

The cleaning of machinery in motion is a specially dangerous process, and even if the machine is not in motion there may be danger from other machinery in motion. A woman or young person must not clean any part of a prime mover or of any transmission machinery while it is in motion, and must not clean any part of any machine if its cleaning would expose part of that machine or of any adjacent machinery.

Beginners are specially liable to accidents when they are first put on to machine work, and the Factories Act, 1937, is the first Act to provide in certain cases for their training and supervision. A new section gives the Secretary of State power to prescribe machines which in his opinion are of such a dangerous character that young persons ought not to work on them unless special requirements are complied with.

No young person may work on such a machine unless he has been fully instructed as to its dangers, and the precautions to be observed and has either received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine. By S.R. and O., 1938, No. 485, nine classes of machines have been scheduled as dangerous, including various power presses, and mangles in laundries.

On certain points the Factories Act, 1937, enacts provisions for safety in great detail, and it is impossible in a work of this character to set them forth in full. It is hoped that the following summary sufficiently covers the salient points:—

Hoists and Lifts.—Every hoist or lift must be of good mechanical construction, sound material, and adequate strength. It must be thoroughly examined by a competent person at least once in six months and his signed report entered in the general register of the

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factory within fourteen days. The hoist or liftway must be substantially enclosed and have gates which when shut will prevent any person falling down the way or coming into contact with any moving part of the hoist or lift. There must be such devices as will secure that a gate can only be opened at a landing, and that the shutting of the gate is necessary for movement away from the landing. For a hoist or lift in use before the passing of the Act, reasonably practicable alterations may be accepted but the gate must be kept closed and fastened except at a landing. The general construction must not admit of "trapping" of persons or goods carried. The maximum working load must be conspicuously marked on the hoist or lift and must not be exceeded. For passenger hoists and lifts some additional requirements are necessary, including for new or reconstructed hoists and lifts the provision of two separate supporting ropes or chains, either of which can carry the weight of the cage and its maximum working load. These requirements are modified for a continuous hoist or lift, or one not connected with mechanical power. A "teagle opening" or similar doorway used for goods must be securely fenced, and the fencing kept in position except when the doorway is in use. The Secretary of State has a general dispensing power exercisable by order where it would be unreasonable in the special circumstances of the case to enforce the full requirements. This power has been exercised in *S.R. and O.*, 1938, No. 489.

Chains, ropes, and lifting tackle.—As respects every chain, rope, or lifting tackle used for raising or lowering persons, goods, or materials the chief rules to be observed are as follows: It is not to be used unless it is of good construction, sound material, adequate strength, and free from patent defect. A table showing the safe working loads of the apparatus in use must be posted in the store where it is kept and in prominent positions on the premises. There is an exception for lifting tackle plainly marked with its safe working load. Safe working loads so indicated must not be exceeded. Lifting tackle in use must be thoroughly examined by a competent person at least once in six months or at such greater intervals as the Secretary of State may prescribe. New lifting tackle must be tested and the safe working load certified by a competent person. In general, lifting chains must be annealed once in every fourteen months. A register containing prescribed particulars must be kept with respect to all such chains, ropes, or lifting tackle, except fibre rope slings. These particulars are given in *S.R. and O.*, 1938, No. 599.

Cranes and other lifting machines.—All parts and working gear,

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whether fixed or movable, must be of good construction, sound material, adequate strength, and free from patent defect, and must be properly maintained. There must be a thorough examination by a competent person once in every fourteen months, with registration of prescribed particulars. These particulars are set out in *S.R. and O.*, 1938, No. 600. Rails and tracks must be adequate and have an even running track, and must be properly constructed and maintained. Safe working loads must be marked and must not be exceeded. New lifting machines must be tested and the safe working load certified by a competent person. If any person is employed on or near the wheel track of an overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures must be taken by warning the driver of the crane or otherwise to ensure that the crane does not approach within 20 feet of the place.

Floors, passages, and stairs.—These must be of sound construction and properly maintained. Staircases must have substantial hand-rails and an open side must have a lower rail as well. All openings in floors must be securely fenced except in so far as the nature of the work renders such fencings impracticable. All ladders must be soundly constructed and properly maintained.

Safety of place of work.—So far as reasonably practicable a safe means of access must be provided and maintained to every place at which any person has to work. If the place of work exposes the worker to a possible fall of more than 10 feet there must be secure foothold and where necessary secure handhold, and failing this, reasonably practicable means of securing his safety by fencing or otherwise must be provided.

Danger in confined spaces from fumes.—Where dangerous fumes are liable to be present to such an extent as to involve risk of persons being overcome by them the following rules must be observed :—

(a) The confined space must have a manhole of a prescribed size, unless there is other adequate means of egress.

(b) Unless a suitable test has ascertained that the space is free from dangerous fumes the person entering must wear a belt and suitable breathing apparatus. A rope must be securely attached to the belt and held by a person outside.

(c) These requisites and a suitable reviving apparatus must be provided and maintained so as to be readily accessible, and must be periodically inspected in the prescribed manner.

(d) A sufficient number of workers must be trained and practised in rescue work.

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The chief inspector may grant a certificate of exemption, with or without conditions, from any of these requirements which he is satisfied are unnecessary or impracticable. Finally no work is allowed in any boiler furnace or boiler flue until it has been sufficiently cooled to make work safe.

Explosive or inflammable dust, gas, etc.—Where the processes give rise to explosive dust then plant must be enclosed, dust removed, sources of ignition excluded or enclosed, and all practicable steps taken to restrict the spread and effects of an explosion. Various precautions must also be taken in the case of explosive or inflammable gas present in any part of the plant. With regard to the precautions in the case of gas the chief inspector has a dispensing power certificate.

Steam boilers.—No part of the machinery is more liable to go wrong and to lead to accidents if not properly attended to than the steam boilers which generate the driving power. The Factory and Workshop Act, 1901, laid down some fairly simple requirements for every steam boiler in a factory whether separate or one of a range, and the second edition of this work summarized them as follows :—

(a) It must have attached to it a proper safety valve and a proper steam gauge and water gauge to show the pressure of steam and the height of the water in the boiler.

(b) It must be examined thoroughly by a competent person at least once in every fourteen months.

(c) Every such boiler, safety valve, steam gauge, and water gauge must be maintained in proper condition.

(d) A report of the result of every such examination in the prescribed form, containing the prescribed particulars, must within fourteen days be entered into or attached to the general register of the factory or workshop, and the report must be signed by the person making the examination, and, if that person is an inspector of a boiler-inspecting company or association, by the chief engineer of the company or association.

The Factories Act, 1937, deals with the subject in much greater detail. For instance, the use of economizers and super-heaters is recognized and specially provided for. The periodical examination is to be at least once in every period of fourteen months and also after any extensive repairs. It is also to be made in two parts, the first when the boiler is cold, and the second when it is under normal steam pressure. When the factory occupier installs for the first time a secondhand boiler it must first be examined and reported

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on, and he must not install a new boiler without obtaining a certificate specifying its maximum permissible working pressure and the nature of the tests to which it has been submitted. Failure to make a thorough examination and making a report which is false or deficient in any material particular is made a punishable offence. If the chief inspector is not satisfied as to the competency of the person employed to make the examination or as to its thoroughness he may require the boiler to be re-examined by a person nominated by him.

These provisions do not apply to any boiler belonging to or exclusively used in the service of the King, or to the boiler of any ship or of any locomotive which belongs to and is used by any railway company.

Steam receivers and steam heaters.—These are legislated for by the Act of 1937 for the first time. The requirements are on the usual lines and the main ones are: a suitable reducing valve, a suitable safety valve, a correct steam pressure gauge, a suitable stop valve, and, if one of a series, a plate bearing a distinctive number easily visible. Every part must be of good construction, sound material, adequate strength, and free from patent defect. There must be a periodic examination at least once in every twenty-six months which must be entered in the general register.

Air receivers.—This is another matter which the Act of 1937 deals with for the first time. It follows very closely the wording of the preceding paragraph.

As regards the last three paragraphs the Chief Inspector may give a certificate of exemption conditional or unconditional, from any provision as to which he is satisfied that it cannot reasonably be applied.

Water-sealed gasholders.—This is another enactment appearing for the first time in the Act of 1937. It is concerned only with a gasholder having a storage capacity of not less than 5,000 cubic feet. It must be of sound construction and be properly maintained. It must be thoroughly examined by a competent person at least once in every two years, and the prescribed record must be entered in the general register. The form of this record is set out in *S.R. and O.*, 1938, No. 598. Where any lift of the gasholder has been in use for more than twenty years there must be a specified type of examination which must be repeated at least once in every period of ten years. Repairs and demolition must be carried out under the direct supervision of a person who by training and experience is competent to deal with risks of explosion and of persons being overcome by gas.

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Preventive measures.—As prevention is better than compensation the following rules are laid down :—

A Court of Magistrates, on complaint by an inspector, and on being satisfied (a) that any part of the ways, works, machinery, or plant is in such a condition (or is so constructed and is so placed) that it cannot be used without risk of bodily injury, or (b) that any process or work is carried on or anything is done in any factory in such a manner as to cause risk of bodily injury, may by order prohibit its use, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered, or require the occupier to take such steps as may be specified for remedying the danger complained of.

Where a complaint has been made under this section the Court or one magistrate may, on application *ex parte* by the inspector, and on receiving evidence that there is imminent risk of serious bodily injury, make an interim order prohibiting, either absolutely or subject to conditions, the use, carrying on, or doing, as stated in the complaint, until the earliest opportunity for hearing and determining the complaint.

Similarly a Court of Magistrates may, on complaint by an inspector and on being satisfied that any factory or part of a factory is in such a condition that any process or work carried on therein cannot be so carried on without risk of bodily injury, by order prohibit the use of that place for the purpose of that process or work until such works have been executed as are in the opinion of the Court necessary to remove the danger.

The provisions as to machinery moved by mechanical power are the most important of any set of provisions, and in spite of them and of the increasing vigilance of the inspectors, in the year 1933 rather over one-fifth of all the accidents, both fatal and non-fatal, were classified under that heading. This is an improvement on the year 1913, when the proportion was over one-fourth.

These general provisions of the Factories Act, 1937, do not cover the whole ground, and special cases are met by the power conferred on the Secretary of State (a) by section 38 and (b) by section 60 of the Factories Act, 1937. (a) Where it appears to the Secretary of State that in view of the number and nature of accidents occurring in any factory or class of factory, special provision ought to be made at that factory or at factories of that class to secure the safety of persons employed therein, he may make *special regulations*¹ requiring the occupier to make such reasonable

¹ The procedure for making special regulations is contained in the 2nd schedule to the Factories Act, 1937. Draft regulations must be published, and

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provision by arrangements for special supervision in regard to safety, investigation of the circumstances, and causes of accidents, and otherwise as may be specified in the regulations. (b) Section 60 in substance re-enacts section 79 of the Factory and Workshop Act, 1901. It states that where the Secretary of State is satisfied that any manufacturer, machinery, plant, process, or description of manual labour used in factories is of such a nature as to cause risk of bodily injury to persons employed in connection therewith, or any class of those persons he may make such *special regulations* as appear to him to be reasonably practicable and to meet the necessity of the case. Such special regulations may prohibit the employment of or modify the hours of employment of workers, prohibit, limit, or control the use of any material or process, or modify or extend such provisions of the Act of 1937 as impose requirements as to health or safety, and may impose duties on owners, employed persons, and other persons, as well as on occupiers.

In the period since the passing of the Factory and Workshops Act, 1901, some important Special Regulations as to safety have been made.

Since the 1st January, 1905, the processes of loading, unloading, moving, and handling goods in, on, or at any dock, wharf, or quay, and the processes of loading, unloading, and coaling any ship in any dock, harbour, or canal have been the subject of Special Regulations. These Regulations were much strengthened in 1925 and more recently the Docks Regulations, 1934, have repealed the earlier ones. These Regulations cover such matters as the fencing wherever practicable of docks, wharves, and quays, the provision of suitable appliances for the rescue of employed persons from drowning, the provision of proper gangways and ladders, the provision of means of lighting when work is carried on after dark, the periodic examination of all machinery, chains, and other gear used in hoisting or lowering, the indication of safe-loads, the prohibition of loading beyond the safe-load, the prohibition of the employment of boys under sixteen as drivers of cranes, etc., and the use of substantially and firmly constructed and adequately supported deck stages and cargo stages. First aid boxes, and in the larger docks ambulances, have to be provided. In spite of these Regulations, in 1933 there were sixty-nine fatal accidents in docks, etc., and over 5,000 non-fatal accidents.

In 1906 there came into force a set of Special Regulations for factories, or parts of factories in which self-acting mules were used

if these are substantial objections there must be a public inquiry held by a competent person.

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in the process of spinning. It provided for the fencing of certain parts, and it also imposed on the person for the time being in charge of a self-acting mule the duty of taking all reasonable care to ensure the observance of the general provisions contained in the Factory Act itself, as already set out above.

From the 1st January, 1907, Special Regulations have been in force regarding the use of locomotives, wagons, and other rolling stock on lines of rails or sidings in any factory or workshop, etc., not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900. The provisions follow the lines of safety recognized in dealing with railway traffic, and include the use of a coupling pole or other suitable mechanical appliance in order to obviate the necessity for the body of the man doing the coupling being within the space between the ends or buffers of one locomotive or wagon and another, the giving of warnings when locomotives or wagons are in motion, the keeping in efficient condition of power capstans used for shunting, the prohibition of the employment of persons under eighteen years of age in working such capstans, and the prohibition of the employment of persons under eighteen as locomotive drivers, and of persons under sixteen as shunters.

The increasing use of electricity as a motive power or for lighting brought into existence an entirely fresh set of dangers, and these have been guarded against by Special Regulations set out in *S.R. and O.*, 1908, No. 1312, dealing with the generation, transformation, distribution, and use of electrical energy in any factory, workshop, etc. These are for the most part too technical for reproduction, but the following more general provisions may be of interest : No person except an authorized person, or a competent person acting under his immediate supervision, shall undertake any work where technical knowledge or experience is required in order adequately to avoid danger ; and no person shall work alone in any case in which the Home Office directs that he shall not. No person except an authorized person or a competent person over twenty-one years of age acting under his immediate supervision shall undertake any repair, alteration, extension, cleaning, or such work where technical knowledge or experience is required in order to avoid danger, and no one shall do such work unaccompanied. Where a contractor is employed and the danger to be avoided is under his control the contractor must appoint the authorized person, but if the danger to be avoided is under the control of the occupier the occupier must appoint the authorized person. Finally, instructions as to the treatment of persons suffering from electric

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shock must be affixed in all premises where electrical energy is generated, transformed, or used above low pressure, and also in such premises in which electrical energy is generated, transformed, or used at low pressure as the Home Secretary may direct.

It may be interesting to mention that out of 241,099 works or departments which in 1933 came under Regulations or special rules, more than half, namely 127,756, came under these Regulations for the use of electricity. Quite recently these regulations have been revised by *S.R. and O.*, 1944, No. 739.

Since 1st May, 1914, there have been special regulations dealing with the construction and repairs of ships. These were replaced by the Shipbuilding Regulations, 1931. They cover such matters as the safety of stages, handrails for gangways, the soundness and adequacy of ladders, efficient lighting, first aid and ambulances.

Since 1st January, 1922, special regulations applying to the manufacture of aerated waters make provision against the danger of the bursting of bottles or syphons.

Special regulations applying to the use of woodworking machinery have been in force for many years. *S.R. and O.*, 1945, No. 1227, contains amendments of the earlier orders *S.R. and O.*, 1922, No. 1196, and *S.R. and O.*, 1907, No. 207. The main provisions are in regard to fencing and guarding machinery, spaces between machines, and lighting of the work.

Since 1st October, 1926, special regulations have been applied to building operations carried on by the use of machinery. These covered the provision and periodical examination of adequate scaffolding, the size of working platforms, gangways, and runs, the safety of ladders, and the use of cranes. The Building (Amendment) Regulations, 1931, greatly strengthened the provisions as to cranes and other hoisting and lifting appliances.

The Horizontal Milling Machines Regulations, 1928, as amended by further Regulations of 1934, deal with the safety of workers on that class of machine.

As early as the end of the year 1908 regulations had been made as to the manufacture of nitro and amido derivatives of benzene. In 1913 regulations were made for the manufacture of chromate and bi-chromate of potassium or sodium. In 1922 these regulations were revoked and new regulations were made for chemical works in general, as defined by an elaborate schedule. Many of the provisions are for the health of the workers, but provisions for safety cover such matters as the use of uncovered fixed vessels containing any dangerous material, the effective fencing of such vessels, the placing of gangways across them, and the prevention

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of passage between adjoining vessels. Further, all dangerous places near to which persons are employed or near to which they have to pass must be efficiently lighted by day and night. In certain parts of the works the risk of explosion is guarded against by the prohibition of naked lights, the carrying of lucifer matches, or the use of heating stoves. Safety valves must be fitted to certain stills for holding gas.

Besides the direct risk of accidents, the workers in a building are always exposed to a certain amount of risk that fire may break out, and they may be unable to escape. Attention was not at first given to this risk and when in the Factory and Workshops Act, 1901, the danger was dealt with it was felt that a distinction must be made between new buildings and buildings already in use. A distinction was also based on size. In a small building means of escape can be improvised on the spur of the moment and the risks run in case of fire are not very serious. Accordingly factories and workshops in which not more than forty persons were employed were not at that time made subject to any regulations as to the provisions of means of escape. As regards all other factories and workshops the Act of 1901 enacted as follows :—

In the case of a factory the construction of which was commenced on or after 1st January, 1892, and in the case of a workshop the construction of which was commenced on or after 1st January, 1896, the occupier had to have a certificate from the local authority of the district that the factory or workshop was provided with such means of escape in case of fire for the persons employed in it as could reasonably be required under the circumstances of each case, and in the absence of such a certificate the factory or workshop would be deemed not to be kept in conformity with the Act. It was the duty of the local authority to examine every factory and workshop of the specified size, and on being satisfied that the factory or workshop was so provided to give such a certificate, which must specify in detail the means of escape provided.

With regard to buildings which on the dates mentioned above were already in use as factories or workshops and were of the specified size, it was the duty of the local authority from time to time to ascertain whether all such factories and workshops within their district were provided with such means of escape as were prescribed in the case of the new buildings, and in the case of any factory or workshop which was not so provided, to serve on the *owner* a notice in writing, specifying the measures necessary for providing the necessary means of escape, and requiring him to carry them out before a specified date. If the owner thought the

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requirements of the local authority were unreasonable, provision was made for the dispute to be referred to arbitration. This obligation to supply means of escape from fire was put on the owner, notwithstanding any agreement he might have with the occupier, but if the owner alleged that the occupier ought to bear the whole or part of the expense he might apply to the County Court for the making of an order which must be just and equitable under all the circumstances of the case. The means of escape when provided must be maintained in good condition and free from obstruction.

The local authority might make general bye-laws as to the provision of means of escape from fire in the case of factories and workshops *irrespective of size*.

Five sets of workplaces were scheduled under section 79 of the Factory and Workshop Act, 1901, and regulations made for them on the ground of special risk of fire. These regulations cover (1) the manufacture of felt hats where any inflammable solvent is used ; (2) the manufacture, manipulation and storage of celluloid or any article wholly or partially made of celluloid ; (3) the manufacture of cinematograph films ; (4) the stripping of cinematograph films ; and (5) the use of cellulose solutions.

The Factories Act, 1937, takes over the system of fire regulations adopted in the Act of 1901 but strengthens them in various ways.

The new rules apply to (a) every factory in which more than twenty persons are employed ; (b) new factories in which more than ten persons are employed in the same building on any floor above the ground floor ; (c) old factories in which more than ten persons are employed as in (b), or more than 20 feet above the ground level ; (d) every factory in or under which explosive or highly inflammable materials are stored or used.

The system of certification by the District Council is maintained. All means of escape specified in the certificate must be properly maintained and kept free from obstruction. The holding of a certificate under the Act of 1901 entitles the occupier to a certificate under the 1937 Act, and protects him until the new certificate reaches him. The occupier of a factory must give notice in writing to the Council if he proposes to make any material extension or structural alteration of the premises or to increase materially the number of persons employed, or to begin to store or use explosive material, or to increase materially the extent of such storage or use. The Council on receipt of such a notice may require the occupier to make specified alterations. If it appears to a factory inspector that dangerous conditions exist in any factory within these rules he may give written notice to the Council, who must

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examine the factory, and can then require the occupier to make specified alterations. The occupier must carry out specified alterations and is then entitled to an amended or new certificate, a copy of which must be sent to the district inspector.

In default of action by the Council within a month the inspector may act for them and recover his expenses from the Council.

An aggrieved occupier may appeal to a court of summary jurisdiction. In urgent cases of danger an inspector may apply to such a Court for an order prohibiting the use of the factory or of a particular process until the danger is remedied.

Finally the Secretary of State may make regulations as to means of escape in case of fire to be provided in factories or any class of factories. This power has been exercised by the Cinematograph Film Stripping Regulations, 1939 (*S.R. and O.*, 1939, No. 571).

It is the duty of the District Council to see that such regulations are complied with. The power of the District Council to make bye-laws is preserved but such bye-laws are void in so far as they contain any provisions inconsistent with regulations. The Minister of Health is made the confirming authority for these local bye-laws.

Closely allied with provisions of means of escape in case of fire, but applicable also to all occasions of sudden alarm, are the rules as to doors. The first rule is that while any person employed in a factory is within it for the purpose of employment or meals, the doors of the factory, and of any room therein in which any such person is, and exit doors in general, must not be locked or fastened in such a manner that they cannot be easily and immediately opened from the inside.

A second rule is that any doors opening on to any staircase or corridor from any room in which more than ten persons are employed and, in the case of any new factory all other doors affording a means of exit from the factory for the employees, must, except in the case of sliding doors, be constructed to open outwards. Again in an old factory in which more than ten persons are employed in the same building above the ground floor, any door not kept continuously open at the foot of a staircase affording a means of exit from the building must, except in the case of sliding doors, be constructed to open outwards. There is also a provision in the case of new factories as to the use of fire-resisting materials for hoist-ways and lift-ways, coupled with a dispensing power given to the chief inspector where these requirements are inappropriate or undesirable.

Emergency exits must be conspicuously marked by a notice printed in red letters of an adequate size.

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Fire warnings clearly audible throughout the building must be provided in any factory where more than twenty persons are employed in the same building, or where explosive or highly inflammable materials are stored or used in any building where persons are employed.

The contents of any room in which persons are employed must be so arranged that there is a free passageway for all persons employed in the room to a means of escape in case of fire.

"Fire-drill" is compulsory in any factory where more than twenty persons are employed in the same building above the first floor, or more than 20 feet above the ground level, or where explosive or highly inflammable materials are stored or used in any building where persons are employed.

We now pass to safety in coal mines, and of these it can be said emphatically that as regards the risk of accidents they are in a class by themselves.

The question of safety in coal mines was not seriously dealt with before the year 1855. Lord Ashley's Act of 1842 authorized the appointment of inspectors, but the solitary provision for safety was a rule that the steam or other engine used for bringing persons up and down the shafts was to be in charge of a male person who was at least eighteen years of age. In 1850 inspectors were given the right to enter coal mines and inquire into all matters and things connected with the safety of the persons employed therein. If the inspector was satisfied that the mine or its mode of working was dangerous or defective he could try "moral suasion", but if the manager remained obdurate then all the inspector could do was to give written notice to the owner or agent of the mine of the particular grounds on which he was of opinion that the coal mine was dangerous or defective, and to report the matter to the Home Office.

In 1855 an important step forward was taken by an Act of that year to amend the law for the inspection of coal mines in Great Britain. General Rules were introduced for all mines and provision was also introduced for Special Rules for individual mines. The General Rules were seven in number and dealt very simply with such points as ventilation, the fencing of shafts, signalling up and down any working shaft, proper brakes on machines for lowering or raising persons, and the safety of steam boilers. The Special Rules were to be such other provisions for the working of a mine as under the particular state and circumstances of the mine might appear best calculated to prevent dangerous accidents. Their weakness seems to have been that they were first approved by the mine owner and then sent by him to the Home Office for approval

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by the Home Secretary. If the latter wished to strengthen the rules, the question went to arbitration. An Act of 1860 increased the General Rules to fifteen. Then in 1872 mines of all sorts were provided for and the present classification of mines was introduced, under which two classes of mines were recognized—viz. (a) coal mines, which included mines of coal, stratified ironstone, shale, and fire clay; and (b) metalliferous mines, which included all descriptions of mines not included in the definition of coal mines. The Coal Mines Regulation, 1872, legislated for coal mines and the main changes were (a) the increase of General Rules to thirty-one, and (b) the introduction of the system of putting mines in the charge of certified managers.

In 1886 provision was made as regards coal mines for the formal investigation of the causes and circumstances of any explosion or accident if the Home Secretary so directed.

In 1887 the General Rules were extended to thirty-nine. Between 1887 and 1911 there were Acts dealing with specific points, such as checkweighing, but there was no further safety legislation. In 1911 a new Coal Mines Act of a very comprehensive character was passed which is still in force. Since that date mining legislation has been chiefly concerned with the commercial side of mining undertakings. Just as in the case of factory legislation where regulations made under various powers constitute a very considerable part of existing law, so in the case of coal mines many points are also dealt with by Regulations, and each year the Mines Department issues a volume under the title *Coal Mines Act, 1911: Regulations and orders relating to Safety and Health*. An attempt is made in the next few pages to give the reader a short account of the main provisions of the Coal Mines Act, 1911, as amplified by these regulations.

The first part of the Coal Mines Act, 1911, requires that the holders of all posts to which are attached any duties either of general management or of supervision of particular safety regulations, shall have definite qualifications for holding such posts, proved for the most part by the possession of a certificate. Thus every mine (except a mine employing not more than thirty persons underground) must be under a manager, who is responsible for the control, management, and direction of the mine, and no person is qualified to be a manager of a mine unless he has attained the age of twenty-five years and is registered as the holder of a first-class certificate of competency under the Act. An under-manager must be registered as the holder of a first-class or second-class certificate of competency. The manager must give daily personal supervision

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to the mine of which he is in charge, except when absent through sickness or on leave. A manager may be in charge of more than one mine if the aggregate number of persons employed underground in these mines does not exceed one thousand, or if all the shafts lie within a radius not exceeding two miles, or if he has the approval of the mine inspector for the district, but each individual mine under his charge must have a separate under-manager. Certificates of competency for managers and under-managers are given by a Board for Mining Examinations.

Besides managers and under-managers there are subordinate officials, commonly known as firemen, examiners, or deputies, whose duty it is to make inspections and generally to carry out various operations for the purpose of discovering the presence of gas, testing and maintaining the ventilation, supervising the state of the roof and the sides of the cuttings, and ensuring general safety. A fireman, examiner, or deputy (a) must be the holder either of a first-class or second-class certificate of competency, or (b) must have attained the age of twenty-five years and have had at least five years' practical experience underground in a mine, of which not less than two years have been at the face of the workings of a mine, and in addition must hold certificates as to his ability to make accurate tests for inflammable gas, as to his ability to measure the quantity of air in an air current, and as to his hearing and eyesight. Further, a fireman, examiner, or deputy must not have assigned to him a district of such a size or character as will prevent him from carrying out in a thorough manner all his statutory duties.

Every person on whom responsible duties are imposed with respect to safety, or to the condition of the roadway, workings, ventilation, machinery, shafts, shot-firing, safety lamps, electrical plant, or animals at a mine, must make and enter in a book in accordance with the regulations of the mine full and accurate reports of the matters falling within the scope of his duties.

The principle that certain workers shall have a prescribed qualification is extended to the main class of directly productive workers.

No person is allowed to work as a coal or ironstone getter otherwise than under the supervision of a skilled workman until he has had two years' experience of such work under such supervision, or unless he has been previously employed for two years in or about the face of the workings, and a skilled workman may not have under his supervision at the same time more than one person who has not had such experience or been so employed. Recently

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further regulations as to working on the coal face have been enacted by the Coal Mines (Training) General Regulations, 1945 (*S.R. and O.*, 1945, No. 1217).

The direct provisions as to safety cover the following points :—

Ventilation.—Such an amount of ventilation must be constantly produced in every mine as to dilute and render harmless inflammable and noxious gases to such an extent that all shafts, road-levels, stables, and workings of the mine are in a fit state for working and passing therein. A minimum percentage of oxygen and maximum percentage of carbon dioxide and inflammable gas are definitely prescribed. In addition to these general rules mines are to be classified according to the amount of the inflammable noxious gases in the main return airway, and further obligations as to ventilation may be imposed on certain classes.

Lighting and Safety Lamps.—Locked safety lamps are to be used in prescribed places. These lamps must be provided by the owner of the mine from types approved by the Board of Trade. Lists of approved safety lamps are issued from time to time. The regulations provide in detail for the giving out of lamps, their examination between shifts, the relighting at appointed stations of lamps which have gone out, and in general for all such precautions as are likely to prevent the common safety of all the workers being jeopardized by one person's carelessness. Where safety lamps are required no person may have in his possession any lucifer match, or any cigar, cigarette, pipe, or contrivance for smoking, and to carry out this regulation powers of search, with proper safeguards, are conferred upon the management. Recently special provision has been made for electric lighting from a source of electric power external to the lighting unit.

Shafts and Winding.—In general there must be in every mine at least two shafts or outlets with which every seam for the time being at work in the mine shall have communication, and such shafts must afford separate means of ingress and egress available to the persons employed in every such seam. At each of these two shafts there must be proper and separate apparatus for raising or lowering persons to and from the surface, and such apparatus, if not in actual use, must be constantly available for use. Detailed provisions are made for the safety of persons while being raised or lowered, such as the provision of proper brakes and the prohibition of the uses of a shaft for raising or lowering minerals and persons at the same time. There are also provisions for the fencing of shafts and entrances, and the securing of shafts by casing or lining, and for proper means of signalling in shafts.

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Travelling Roads and Haulage.—In mines opened since 1911 there is to be in general a provision for a travelling road for every seam distinct from the haulage road. In every mine, new and old, there are to be two main airways for each seam, and these airways are to be of such size and to be maintained in such condition as to afford a ready means of ingress to and egress from the workings. While haulage is in motion there are strict rules against persons travelling on foot on any haulage road on which the haulage is worked by gravity or mechanical power, except for special purposes and under special circumstances which minimize the risk. When the haulage is worked by gravity or mechanical power the tubs are not to be used for the conveyance of men, except on the written permission of the manager or under-manager and at the commencement and end of their employment. Refuge holes must be provided at certain intervals along a haulage road, these intervals varying with the motive power for the haulage, the rate of haulage, and other circumstances. Every travelling road must be of adequate height. Proper apparatus must be provided on haulage roads and proper care taken to prevent accidents arising from tubs running away, or running back. Finally, means of signalling along haulage roads must be provided.

Support of roofs and sides.—The roof and sides of every travelling road and working place have to be made and secure, such roads and places must not be used unless made secure. Detailed instructions are given in the Act in order to secure the systematic support of the roof and sides of these places.

Signalling.—The general code of signals in mines is to be such uniform code as may be prescribed by general regulations under the Act. The present set of General Regulations were made in 1913 and amended in 1920, and sections 92-6 deal with the matter. There must be in attendance at the top of every shaft by which any persons are about to be lowered into the mine a competent person, for the purpose of receiving and transmitting signals, and so long as persons are in the mine below ground, a competent person must be in constant attendance for that purpose at the top of the shaft from which persons are to be raised, and also at every entrance from the workings, in which such persons are engaged, into the shaft from which persons are raised.

The regulations of the mine may require telephonic communication between different parts of a mine.

Machinery.—These provisions follow closely the corresponding provisions in factory legislation. Thus every fly-wheel and all exposed and dangerous parts of the machinery in or about the mine

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must be kept securely fixed. Steam boilers must have proper gauges and be periodically examined, and in addition to the requirements of the Factory and Workshop Act, 1901, they must be cleaned out and examined internally, so far as the construction of the boiler will permit, by the person in charge of it once at least in every three months. After 16th December, 1911, a steam boiler is not to be placed underground in any mine. A Court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any part of the machinery or plant used in a mine (including a steam boiler) is in such a condition or so placed that it cannot be used without danger to life or limb, prohibit its use, or, if it is capable of repair or attention, prohibit its use until it is duly repaired or altered.

The winding engineman, who is the person who works the machinery used for lowering or raising persons from or to the surface, must be a competent male person not less than twenty-two years of age, appointed in writing by the manager.

A winding engineman must be in attendance during the whole time that any person is below ground in the mine, but no one person is to be employed for more than eight hours in any one day.

In general the haulage system must be in charge of competent male persons not less than eighteen years of age.

Every steam engine room and boiler gallery and motor room in or about a mine must be provided with at least two proper means of egress.

Electricity.—Electricity is not to be used in any part of a mine where, on account of the risk of explosion of gas or coal dust, its use would be dangerous to life. Questions between mine owners and inspectors as to places which are dangerous are to be settled by a referee chosen from a panel of referees appointed under the Act. Electric current must be switched off from all places in which, for the time being, the percentage of inflammable gas is above the percentage named in the Act.

The use of electricity is another of the subjects to be dealt with by General Regulations, and sections 117–137 of the present General Regulations are those now in force.

Explosives.—The Home Secretary by order regulates the supply, use, and storage of explosives at mines. The principal Order in force is the Explosive in Coal Mines Order of 1st January, 1934, which contains elaborate general provisions about shot firing. The special provisions apply in all coal mines in which inflammable gas has been found within the previous three months in such

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quantity as to be indicative of danger. In these mines no explosive, other than a permitted explosive, is to be used, and competent shot firers must be appointed in writing, and no shot is to be fired except by a shot firer. Additions to the list of permitted explosives have been made from time to time, and the Board of Trade every now and then issues an up-to-date list.

The Coal Mines Act contains a provision that no explosives are to be taken into or used in any mine except explosives provided by the owner, and the price, if any, charged by the owner to the workman for any explosives so provided must not exceed the actual net cost to the owner.

Prevention of Coal Dust.—Fresh general regulations on this subject were made on 30th July, 1920, and these were amended on 20th November, 1924. Part I deals with precautions against coal dust, and Part II with precautions against spontaneous combustion of coal.

Inspections as to Safety.—One or more stations must be appointed at the entrance to the mine or to different parts of the mine, as the case may require, and no workman must pass beyond any such station until the part of the mine beyond that station has been examined and reported to be safe. These inspections before commencing work are to be made by the firemen, examiners, or deputies within the two hours immediately before the commencement of the work of the shift, for the purpose of ascertaining the condition of the mine so far as the presence of gas, ventilation, roof, and sides, and general safety are concerned. Full and accurate reports must be recorded without delay in a book kept at the mine for that purpose and accessible to the workmen in the handwriting of the person making the inspection, and must be signed by him. In the case of a mine worked by a succession of shifts, no place must remain uninspected for an interval of more than five hours. Once at least in every twenty-four hours competent persons must examine thoroughly the state of the external parts of the machinery, the state of the guides in the shafts, and the state of the head gear, ropes, chains, cages, and other similar appliances state of the head gear, ropes, chains, cages, and other similar appliances of the mine which are in actual use for the purpose of raising or lowering persons in a mine.

Once at least in every week competent persons must examine thoroughly the state (a) of all other machinery, gear, and other appliances of the mine which are actually in use, whether above ground or below ground; (b) of the shafts in which persons are lowered or raised; and (c) of every airway in the mine. Records

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must be kept on the same lines as those laid down for the reports of firemen, examiners, or deputies.

Withdrawal of workmen.—If at any time the person in charge of the mine or any part of it, finds that the mine, or any place in it, is dangerous, whether by reason of the prevalence of inflammable or noxious gases, or of any other cause, every workman must be withdrawn from the dangerous place, and a special inspection must be made by a competent person, and the workmen must not be readmitted for ordinary working purposes until the place is duly reported not to be dangerous.

If a workman discovers the presence of inflammable gas in his working place he must immediately withdraw from it and inform the firemen, examiner, or deputy.

There are also miscellaneous provisions guarding against danger from accumulated water, and the storage and use of inflammable material below ground. A barometer, thermometer, and hygrometer must be provided, and readings taken and recorded at prescribed intervals.

Finally, every person must observe such directions with respect to working as may be given to him with a view to compliance with these safety rules, or the regulations of the mine, or generally with a view to safety. Penalties are imposed for contravention of or non-compliance with any of the provisions as to safety, not only on the person immediately guilty but also on the owner, agent, and manager of the mine unless he proves that he has taken all reasonable means by publishing and to the best of his power enforcing these provisions.

Rescue Work.—The Coal Mines, 1911, was the first Act to make provision for rescue work. It enacts that General Regulations may require provision to be made at all mines or any class of mines in regard to all or any of the following matters: (a) supply and maintenance of appliances for use in rescue work, and formation and training of rescue brigades; (b) supply and maintenance of ambulance appliances and the training of men in ambulance work.

General Regulations on these points are now to be found in an order of 10th December, 1928, and are based on the provision of Central Rescue Stations. These regulations apply to all mines which employ more than ten persons underground, but the Board of Trade may exempt, partially or wholly, any mine employing less than 100 persons underground, or any mine which is outside a radius of 15 miles from a Central Rescue Station.

These Central Rescue Stations are to be provided and maintained at convenient centres, and are to be fully equipped for rescue work

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and for the training of rescue workers. The normal radius of action of a rescue station is to be 15 miles. Each station is under a competent superintendent. Mines must affiliate to a Central Rescue Station unless exempted on the ground that they have effective arrangements for rescue work of their own. Sufficient rescue workers must be maintained either (a) by the provision of a permanent rescue corps at the Central Station, and of trained rescue workers at the mine, or (b) by the provision of rescue brigades at the mines. Rescue workers are to be picked men and to be adequately instructed and kept in practice. Rescue apparatus and equipment of a prescribed standard is to be provided and maintained at every Central Station and at every mine employing 100 persons underground. General Regulations of 11th February, 1930, further require that adequate arrangements shall be made for first aid treatment.

In order that a man engaged on rescue work should not be in a worse position than an ordinary servant of the mine owner, it was necessary to give him special rights under the Workmen's Compensation Acts. He was protected whether injured while training or injured while doing actual rescue work or ambulance work. For his special position under the National Insurance (Industrial Injuries) Act, 1946, see p. 200.

Special regulations for individual mines may be suggested by (a) the inspector of the division; (b) the mine owner; or (c) a majority ascertained by ballot of the workmen employed in the mine. Their object is to supplement or modify the general regulations. They are subject to the approval of the Home Secretary, and when approved by him they have effect as if they formed part of the general regulations applicable to the mine.

We must now return to the legislation of the year 1872 with regard to safety in metalliferous mines.

The Metalliferous Mines Regulation Act, 1872, contained nineteen general rules as to safety and these remained practically unchanged until 1938. In that year General Regulations were made for both quarries and metalliferous mines. They have been dealt with on p. 138 so far as regards the hours of employment of women and young persons.

These general regulations in fact cover much the same ground as does the Factories Act, 1937, in regard to factories. In both cases there is a section devoted to the dangers of machinery and plant. In the case of mines there is a separate section on safety in general. These regulations were framed after the passing of the Factories Act, 1937, and it will be sufficient to say that most of

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their provisions follow very closely those contained in the 1937 Act. As regards the dangers arising from the use of electricity it should be noted that as regards metalliferous mines the safeguards are set out in Part V of the General Regulations, but as regards quarries they are set out in the Quarries General Regulations (Electricity), 1938 (*S.R. and O.*, 1938, No. 1233).

The dangers of railway service, which must be carefully distinguished from the danger to which the travelling public are exposed, were specially legislated for in 1900.

The Railway Employment (Prevention of Accidents) Act, 1900, gave the Board of Trade power, now transferred to the Minister of Transport, to make such rules as they might think fit with respect to the following subjects, with the object of reducing or removing the dangers and risks incidental to railway service :—

1. Brake levers on both sides of wagons.
2. Labelling wagons.
3. Movement of wagons by propping and tow roping.
4. Steam or other power brakes on engines.
5. Lighting of stations or sidings where shunting operations are frequently carried on after dark.
6. Protection of point rods and signal wires, and position of ground levers working points.
7. Position of offices and cabins near working lines.
8. Marking of fouling points.
9. Construction and protection of gauge glasses.
10. Arrangements of tool boxes and water gauges on engines.
11. Working of trains without brake vans upon running lines beyond the limit of stations.
12. Protection to permanent way men when relaying or repairing permanent way.

As regards matters not coming within those twelve points, if the Minister considers that avoidable danger to persons employed on any railway arises from any operation of railway service, he may, after communicating with the railway company and giving them a reasonable opportunity of reducing or removing the danger or risk, make rules for that purpose.

The Minister has a general power by rules made under these provisions to require the use of any plant or appliance which has been shown to their satisfaction to be calculated to reduce danger to persons employed on a railway, or the disuse of any plant or appliance which has been similarly shown to involve such danger.

The Minister must give notice of his proposal to make rules,

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and allow a month during which objections and suggestions may be sent in. These objections or suggestions must then be considered by the Minister and a person who is dissatisfied with the Minister's decision can have the matter referred to the Railway and Canal Commissioners. If the Commissioners determine that the objection is reasonable the rule to which the objection relates shall not be made.

The Minister and the Commissioners, in considering objections to a draft rule must, amongst other matters, have regard to the questions whether the requirements of the rule would materially interfere with the trade of the country, or with the necessary operations of any railway company. Where the requirements of the case would be better met by a specific order or direction than by a general rule the Minister may make such an order or direction, but in the same manner as he may make a general rule.

The powers of the Minister for the inspection of railways include power to inspect any railway for the purpose of ascertaining whether there is any ground for proceeding to make rules under the Act, or whether there has been any contravention of or default in compliance with any rule made under the Act.

Rules under this statute were not made till 1902 and those rules are known as the Prevention of Accidents Rules, 1902 (*S.R. and O.*, 1902, No. 616). There was a slight amendment made in 1906 in reference to notice of accidents. In 1911 a substantial alteration was made for the purpose of getting new wagons fitted with brake levers on both sides and allowing a term of years for the alteration of wagons already in use. The new rules are known as the Prevention of Accidents Rules, 1911 (*S.R. and O.*, 1910, No. 1058). A further extension of time has been given by the Prevention of Accidents Rules, 1931 (*S.R. and O.*, 1931, No. 945).

CHAPTER II

INJURED WORKERS

(a) Under the Common Law, etc.

(b) Under National Insurance

We have been examining carefully the rather elaborate provisions for the prevention of accidents in factories, docks, mines, and railways and have learnt from statistics that in spite of this code of safety an appalling number of industrial accidents occur every year. The question then arises as to the incidence of the burden of the accident. If the accident is at all serious the worker is disabled for a shorter or longer period from earning wages and apart from legislation the immediate effect of the accident is that the burden of the accident, so far as it involves a loss of wages to the worker, is put upon the worker's shoulders. The employer may be put to some inconvenience by the worker's absence but he is generally able to rearrange the duties of his workers so as to make up for the absence of one worker, and in the usual state of the labour market he has no great difficulty in providing himself with a substitute, temporary or permanent, for the injured worker. Some accidents, such as explosions, do injury to property as well as to persons and the employer has a very direct interest in reducing such accidents to a minimum, but it is well to realize that in the case of ordinary accidents the immediate effect is very grave for the worker and comparatively slight for the employer. Within a few days of a serious accident the income of the injured man comes to an end. He can generally manage for a few days because under the modern system of paying wages the employer keeps a few days' pay in hand. Thus sometimes a week's money is kept back, and on Friday night the worker is paid all earnings up to the preceding Friday. If then he is disabled on the following Monday afternoon, he or someone on his behalf would draw a full week's wages on the succeeding Friday, and wages for Saturday and part of Monday on the second Friday. A week's money is the maximum kept in hand as regards ordinary wages, though bonuses are sometimes paid monthly, and more usually wages are made up to the Wednesday evening or the Thursday evening preceding pay

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day. Now so long as the compensation (if any) obtainable by the workman takes the form of a lump sum payable as the result of legal proceedings then the worker has to subsist as best he can until the Court is in a position to arrive at a final adjudication of the sum which the employer should pay to the worker. The ultimate result may be that the whole financial loss to the worker is borne by the employer, but that is only an ultimate result, as for the time being such financial loss, together with a further expenditure for the costs of the legal proceedings, is being borne by the worker, and this financial pressure on the worker may be so acute that he is forced to accept an inadequate sum by way of an immediate settlement. Very often the worker is mentally unequipped for estimating damages with any precision and is also financially in desperate circumstances, so that he is in the worst possible position for making a proper bargain. The Workmen's Compensation Act, 1897, in a limited number of cases, met some of these difficulties by giving compensation in the form of a weekly payment, which could be assessed and paid almost at once. The question of paying a lump sum in the place of weekly payment could be raised later, but while it was being discussed the worker had at any rate some income and was in a far more advantageous position for making a fair bargain.

In 1906 the principle of the 1897 Act was applied to all manual workers and also to "black-coated workers" with less than a stated salary, and after various amending Acts had been passed, the present year, 1946, has seen the Workmen's Compensation Acts repealed and, in its place, under the National Insurance (Industrial Injuries) Act, 1946, a national system of insurance against accidents at work has become law. But all this legislation has left the injured workman free to assert such rights as may accrue to him against his master under the Common Law, and before we examine the Industrial Injuries Act, 1946, it will be well to make it plain what the workers position is apart from that Act. The Common Law was not concerned with the idea of a starving workman, or with the idea that the employer was making his living at the cost of the exposure of his workers to certain risks, or with any other social or humanitarian ideas. What it did say was this—the employer invites his workers to come to his premises to do work for him, under his superintendence or that of his agents, and such invitation imposes on him the duty of reasonable carefulness. If the worker could show that an accident had happened to him through the carelessness of the master or, to use a more legal term, through the master's negligence, then the Common Law would give the

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worker damages in an action for negligence. A man invites trades-people to come to his back door and his friends and the postman to come to his front door. Such a man must be reasonably careful and must not carelessly leave traps for the people who respond to his invitation, and should one of them be injured by his negligence then the injured person may obtain damages in an action for negligence. In other words the Common Law did not give damages to injured workmen because they were workmen but because they were persons who had suffered from someone's negligence and, as will be seen very shortly, as workers for an employer they had far less rights against the employer than they would have had if they had been strangers on his premises by invitation.

The invitation of the employer to the workers to work on the employer's premises imposed some obvious duties on the employer. Thus the building and the machinery must be reasonably safe and efficient for the purposes for which they are going to be used. He does not guarantee the safety in all respects of the employment. For instance, if the business carried on in the building is the making of, or involves the use of high explosives that does not of itself render him liable to his employees for accidents.¹ Further, the employer must adopt a reasonably safe and proper system of working, under a reasonably efficient staff. It is negligent for an employer to use buildings or plant and machinery for purposes for which they are not suitable and which are likely to lead to accidents. In the same way it is negligent to use an untrained man in a position in which, if a trained and experienced man is not employed, accidents are likely to occur. If an employer puts a man in charge of boilers who knows nothing of boilers, or sets a man to give out plant and tackle who has had no previous experience, he is obviously inviting accidents, and they are due primarily to the employer's negligence in so carelessly selecting these men. The Common Law does not expect the employer to guarantee the competence of his workers for particular jobs, but he must select a man who is apparently fit for the work to which he is to be set. Thus, suppose an employer wants a millwright to take charge of his machine repairs. He must engage a millwright and not a tailor's cutter, but the competence of millwrights will vary and possibly the employer will hit upon a millwright who though he has good references is sometimes very careless. If the employer has been reasonably careful in engaging his millwright he will have fulfilled his Common Law duties and cannot be charged with carelessness

¹ Read v. Lyons, 1946, 62 T.L.R. 646.

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on the first occasion of an accident happening through the millwright's carelessness.

In an old case a workman had been injured through the failure of the scaffolding on which he was working. This failure was due to the foreman's negligence, but the case was heard before the Employer's Liability Act, 1880, had made an employer liable for the negligence of his foreman, and in order to succeed the workman had to prove personal negligence on the part of the employer. The Court held that such personal negligence could only be brought home to the employer by proving either that the employer had *personally interfered* with the erection of the scaffolding or that he had *knowingly employed* an unskilful and incompetent person to see to its erection, and that it was not enough for the jury to find as a fact that an incompetent person had been employed.

In the same way it is not enough for a jury to find that premises are in a defective and dangerous condition. Thus in a case it was proved that a chauffeur was injured through the fall of a heavy pane of glass from the top of the door of the employer's garage. The putty of the frame had perished and disappeared, and someone at some time had put a nail in the frame to keep the glass in. No evidence was put in to show that the employer had any personal knowledge of the state of this pane of glass. The High Court held that the duty of the employer to detect *secret* defects was no greater than the duty of the servant himself to detect them. There was no negligence on the part of the employer or the servant, and as far as they were concerned the injury was caused by pure accident and the employer was under no Common Law liability.

An instance of liability where there was personal knowledge of the conditions under which work was being done is to be found in the following case. A workman was employed by a firm of stevedores in loading a ship. Under special regulations the ship-owner was bound to maintain safe means of access by ladder or steps from the deck to the bottom of the hold. A permanent fixed ladder leading down to the hold became so encumbered with cargo that it could not be used. Some of the workmen therefore obtained a rope ladder from the ship, which they attached to the hatch and allowed to swing loose about the bottom of the hold. One of the firm of stevedores saw this contrivance and saw the men using it but made no objection, although it was obviously very dangerous. The man in question while using the rope ladder fell and suffered severe personal injuries and brought an action at law against his employers for damages for negligence. The Court of Appeal held that although the statutory duty under the Factory and Workshop

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Act of providing certain plant fell on the shipowners and not on the firm of stevedores, yet the firm had been guilty of negligence in their supervision of the plant used by their workmen and were liable for injury caused by that negligence.¹

When the Legislature has imposed a statutory duty on an employer he can be sued at Common Law for neglect of his duty by any person injured thereby, *to whom the duty was owing*. A case on these lines arose like the preceding case out of the Special Regulations made for ships in the process of loading or unloading. The regulation in question imposed a duty on the owner of a ship lying at a wharf or quay for the purpose of loading or unloading to have a gangway from the shore to the ship for the use of the persons employed in such process. A ship was lying at a quay being unloaded and was connected with the shore only by a ladder placed in a horizontal position. A party of the men employed in unloading went ashore for refreshment, and on returning had to get on board by crawling on hands and knees over this ladder. The last man fell into the river and was drowned. A gangway was at once used after this accident. The father of the deceased brought an action for damages against the owners of the ship for the loss of his son and obtained a verdict for £270.²

We may sum up the position so far by saying that a workman who is injured can bring an action at Common Law for damages against an employer where the injury has been caused either (1) by the employer's personal negligence, or (2) through a breach of the employer's statutory duties.

A word or two must be said as to the employer's defences under the Common Law. One line of defence is expressed by a Latin phrase, *Volenti non fit injuria*. In other words he took the risk upon himself. This he would not ordinarily do unless the work for which he is engaged is obviously dangerous, e.g. making explosives or breaking in horses for a circus. But where outside the scope of his ordinary duties he is asked to undertake a risky operation, and this he does freely and voluntarily, and possibly in return for extra remuneration, then the maxim applies and would afford the employer a good defence.³ This defence is not available to an employer who is being sued for breach of a statutory duty, for if it were, the negligence of the employer combined with the assent of the servant would effect a defeat of an enactment which could not be brought about by explicitly contracting out (see pp. 5-6). A second

¹ *Monaghan v. Rhodes and Sons, C.A.*, 1920, 1 K.B. 487.

² *Mackey v. J. H. Monks (Preston), Ltd.*, 1918, A.C. 59.

³ *Bowater v. Rowley Regis Corporation*, 1944, 1 K.B. 476 (C.A.).

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line of defence is what is called "contributing negligence". In other words the employer says to the injured worker, "It was entirely your own fault." If such in fact was the case then the employer has a good defence. The employer is not precluded from saying this though he is himself in breach of some statutory duty, such as failure to fence machinery securely under the Factories Act.¹ However contributory negligence is also used in another sense to cover the case where the accident would not have occurred but for the carelessness of both parties. In such circumstances under the Law Reform (Contributory Negligence) Act, 1945, the Court will assess the respective degrees of responsibility, e.g. blame may be distributable as to one-third to the claimant, and as to two-thirds to the defendant, and damages will be awarded accordingly. In a recent case the workman failed to keep the guard on a circular saw low enough, but the employer was in fault in not seeing that the guard was properly set, and the Court assessed liability on an equal basis.²

But there was still another pitfall for the workman. If he died as a result of the accident, as his claim was based on the personal negligence of his employer, the maxim *Actio personalis moritur cum persona* (a personal claim comes to an end with the death of either party) applied. The Fatal Accidents Act, 1846, commonly called Lord Campbell's Act, dealt with this point but not by directly taking the workman's claim out of the scope of this maxim. The personal representatives were given a right of action for the benefit of the deceased's wife, husband, parent, and child according to the circumstances of the case. Then in 1934 by the Law Reform (Miscellaneous Provisions) Act the maxim set out above was abolished, and on the death of the injured person the right of action survives, and any damage awarded becomes part of the estate of the deceased.

The accidents to his workmen for which an employer was not responsible at Common Law fell into two main classes. The first class consisted of accidents due to negligence of a fellow workman. The whole point of the Employer's Liability Act, 1880, was to remedy this grievance. The second class consisted of accidents which were not due to negligence at all, or were due to the negligence of some unknown person, such as the unknown person in the case on p. 181, who was responsible for securing the pane of glass with a nail. Accidents of this class are sometimes spoken of as "pure accidents". One of the main points of the Workmen's Compensation

¹ Caswell v. Powell Duffryn Associated Collieries, 1940, A.C. 152.

² Cakebread v. Hopping Bros., 1947, 1 A.E.R. 389 (C.A.).

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Act, 1897, and subsequent legislation, was to give the workmen compensation where the accident was a pure accident.

We must now return to the first class of accidents for which the Common Law gave no remedy—viz. accidents arising from the negligence of a fellow servant.

To understand the peculiarity of the Common Law on this subject the reader must first grasp the ordinary rule under which a master is held liable for his servant's negligence shown in the course of his duties as servant.

In this case the acts of the servant rank as the acts of the master, and the master is liable for the consequences of the servant's negligence. Thus, if a builder sends a slater to mend the roof of a house, and in doing so he carelessly drops a slate on the head of a person in the garden of the house and injures him, such person has a right of action for damages for negligence against the builder.

Now let us introduce a fellow servant into the illustration. The slater takes with him a boy, and he tells the boy to guard the ladder set up against the roof and to warn passers-by. The slater then proceeds to drop slates off the roof and carelessly drops one on the head of the boy, who was himself being careful. The Common Law did not give the boy the rights which it gave to a stranger. It applied the maxim *Volenti non fit injuria* without that precise appreciation of its scope which is to be found much later in the case of *Smith v. Baker* (1891 A.C. 325), and held that the boy on engaging himself to work for the builder as assistant to the slater voluntarily took on himself the risk of the slater being careless and injuring him, and that it was part of the boy's contract with his employer that the employer should not be responsible for any injuries so sustained by the boy. The point is so important that it is worth while reproducing verbatim a few lines from the railway case¹ in which this principle was established. "Put the case of a master employing A and B, two of his servants, to drive his cattle to market, it is admitted if, by the unskilfulness of A a stranger is injured, the master is responsible; not so, if A by his unskilfulness hurts himself; he cannot treat that as the want of skill of his master. Suppose then that by A's unskilfulness B, the other servant, is injured while they are jointly engaged in the same service; there, we think, B has no claim against the master; they have both engaged in a common service, the duties of which impose a certain risk upon each of them, and in case of negligence on the part of the other the party injured knows that the negligence

¹ *Hutchinson v. York, etc., Railway Co.* 5 Exch., 343, and for a recent reconsideration see *Radcliffe v. Rubble Motor Services, Ltd.*, 1939 A.C. 215.

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is that of his fellow servant and not of his master. He knows when he was engaged in the service that he was exposed to the risk of injury, not only from his own want of skill and care, but on the part of his fellow servants also, and he must be supposed to have contracted on the terms that as between himself and his master he would run that risk."

This defence of the employer, given to him by the Common Law, when he is sued by one of his workmen who has been injured by the carelessness of a fellow workman, is called the defence of common employment.

There must be a real common employment, and there are two cases in which the employment, though it might at first sight seem to be a common employment, on further examination is seen not to be really within the rule. Thus two workmen, A and B, may be working on the same undertaking, but under different masters. This often happens where sub-contractors are employed on the same building site. Then if A carelessly injures B, B has a Common Law right to get damages from A's master. B is in the position of a stranger, and not of a fellow servant, with regard to A.

Again, a master may have more than one undertaking, and have a separate set of servants for each undertaking. The servants engaged for one undertaking are not supposed to run the risk of the carelessness of the servants engaged for the other undertaking. Thus, suppose a country gentleman has a staff of servants for his house and stables, and also runs a farm. In such a case if a dairy-maid in bringing home milk from the farm is carelessly driven over by the coachman, it was said that it could hardly be contended that the rule would apply.

Accidents arising from the carelessness of fellow servants are under modern conditions much more frequent than accidents arising from the personal negligence of the master. When the question first arose of bringing the law as to compensation for accidents more into harmony with actual facts, the anomaly between these two classes of accident was the only point to receive attention, and the object of the Employer's Liability Act, 1880, was to get rid of the defence of common employment in five specified sets of circumstances.

The language of the first section is explicitly directed to this end. The workman is given "the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of, the employer, nor engaged in his work". In other words, he is put in the position of "a

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stranger", who may treat the negligence of a servant as being the negligence of the master. In the words of the Court of Appeal, "the Act, with certain exceptions, has placed the workman in a position as advantageous as, but no better than, that of the rest of the world who use the master's premises at his invitation on business."

The five sets of circumstances in which the injured workman can make a claim for damages are as follows:—

(1) Where the injury to the workman was caused by reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer, such defect arising from or not having been discovered or remedied owing to the negligence of the employer, or of some person in his service, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition. In considering whether machinery or plant is defective, regard must be had not merely to its condition but to its suitability for the purpose for which it is being used. Thus a plank may be in perfect condition, and yet be too short to be safely used in a particular job, so that its choice for that job is "negligent".

(2) Where the injury to the workman was caused by the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence. This covers the negligent performance of their duties by managers, foremen, charge hands, and persons in similar positions.

(3) Where the injury to the workman was caused by the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, and the injury resulted from his having so conformed.

Thus, the foreman sends a labourer with a message containing a direction to a workman in a distant part of the works. The labourer makes a muddle of the message, and as a consequence the workman who conforms to the mistaken direction is injured.

(4) Where the injury to the workman was caused by reason of the act or omission of any person in the service of the employer done or made in obedience (a) to the rules or bye-laws of the employer, or (b) in obedience to particular instructions given by any person delegated with the authority of the employer on that behalf, and the injury resulted from some impropriety or defect in the rules or bye-laws, or in the instructions.

(5) Where the injury to the workman was caused by reason of

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the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.

The claim of the workman can be met by any defence which is valid in claims for negligence at Common Law, but the Act also creates a new statutory defence. The workman is deprived of his claim if it is shown that he knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information of it, to the employer or some person superior to himself in the service of the employer, unless the workman was aware that the employer or such superior already knew of the defect or negligence.

For instance, A and B are using a rope which they think has worn too thin to be safe for the job they are on. They must give information of this to their foreman, and if they do not, they lose their claims if an accident happens to them through the use of the rope. On the other hand, if it is agreed between A and B that A shall go and tell the foreman, and the foreman takes no notice, and later on in the day B is injured through using the rope then B has not lost his claim, as he was aware that the foreman already knew of the defect. The damages which can be awarded to the injured workman are assessed on the same principle as Common Law damages, but as a set off to the extension of the employer's liability there is in each case a maximum amount which can be awarded, and this maximum is not based on the seriousness of the injuries, but on estimated earnings. Thus, suppose two men, A and B, whose estimated earnings under the Act are the same, are injured by the same accident. A's injuries are serious and B's very serious indeed. A is awarded £600 and B is awarded £1,200; the maximum under the Act in both cases being £750. A gets full compensation and could not have got more in a Common Law action. B gets £750 instead of £1,200 or only five-eighths of what he would have got in a Common Law action. The amount of compensation which can be recovered is not to exceed the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district in which the workman was employed at the time of the injury.

Under the Common Law an injured person need give no special notice of the fact of his injury and has two years within which to commence legal proceedings. Apparently when the Act of 1880 was passed employers were very much afraid that claims would be invented or would be brought against them when the recollection

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of events had become dim, and in order to minimize these risks unnecessarily stringent and inelastic provisions were inserted as to notice of the injury and the commencement of proceedings. The injured workman loses his right under the Act unless within six weeks of the occurrence of the injury he gives notice to the employer in writing and in the form prescribed by the Act that injury has been sustained. The accident may have been notorious and the employer may know all about it, but it is still necessary to have a formal notice. In cases of grave injury the injured man may be physically incapable of seeing to the notice himself, and his relatives may be ignorant of what should be done. In some cases the employer may deliberately scheme to keep the man or his relatives quiet for the first six weeks in order to relieve himself of legal liability.

But, with only one exception, the notice within six weeks is an absolutely necessary preliminary to proceedings. The one exception is the case where the workman has been killed and the judge is of opinion that there was a reasonable excuse for the notice not being sent in time. The actual proceedings to recover compensation in the County Court must be commenced within six months from the occurrence of the accident, but when death results this time is extended to twelve months from the death. The proceedings take the form of an ordinary County Court action, and fees are payable on the usual scale. The passing of the Workmen's Compensation Acts, 1897 and 1906, though it in no way diminished the workmen's rights under the Employer's Liability Act, 1880, led to a rapid diminution in the number of cases brought under the Act of 1880. The simplicity of the procedure, the saving in initial expense, the quickness with which the first instalments of compensation become payable, were all practical points which told in favour of the Workmen's Compensation Act, and which induced many claimants who had good claims under the Employer's Liability Act to forgo their deferred and uncertain claims under that Act, in favour of immediate compensation under the Workmen's Compensation Act even though if they had persisted in their claims under the Employer's Liability Act they might eventually have received much higher compensation than under the Workmen's Compensation Act. In 1898 the total number of actions under the Act of 1880 brought in the United Kingdom was 879. The average for the period 1898-1906 was roughly 700 per annum. In the next four years the average dropped to just over 200. In 1913 the number was 171, in 1918 it was only sixty-three, and in 1919 it was seventy-seven.

The Workmen's Compensation Act, 1897, was the first Act to

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break away from the conception of negligence as the only basis for a claim to compensation for accidental injuries. It covered in certain classes of employment claims arising from personal injury by accident arising out of and in the course of the employment. The employments selected were employment in or about a railway, factory,¹ mine, quarry, or engineering works, and in or about any building which exceeds 30 feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of construction, repair, or demolition thereof. It will be noticed that workshops¹ were not included, and that the line of demarcation between buildings within and buildings outside the operation of the Act was arbitrary and not very clearly defined. Within its limits the Act was a great success and its principles were given much wider scope by the Workmen's Compensation Act, 1906.

The Act of 1906 was the first of a series of Acts legislating for the protection, not merely of manual workers of all kinds, but also of clerical staffs and other workers of similar classes within a stated income limit. The principle that the State should intervene to protect the worker in humble circumstances, and not merely the manual worker, was new and most important, and as it was generally approved there was no difficulty in adopting the same principle when the National Health Insurance scheme was introduced in 1911, and when the Unemployment Insurance scheme was made general in 1920. The Workmen's Compensation Act, 1906, remained unamended till the changes in wage rates brought about by the 1914-18 war made the scale of compensation unsuitable. On that point a temporary and not very well considered amending Act was passed. There were also slight amendments on other specific points. In the first edition of this book several pages were devoted to the recommendations of a Departmental Committee which had just reviewed the working of the Act. The Report of that Committee led to the passing in 1923 of a fairly wide amending Act. Finally two years later the existing legislation was consolidated by the Workmen's Compensation Act, 1925.

At this stage it will be advisable to state briefly the legal character of this kind of legislation. It gave the injured workman in stated circumstances a claim against his employer under which he received from his employer a proportion of the wages he had been earning. Originally the idea was to put the workman on half wages during

¹ At this time factory legislation used the term "factory" with a much more restricted meaning than it has in the Factories Act, 1937.

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disablement, but as time went on this proportion was increased for certain claimants. In cases of prolonged disablement there were provisions under which the workman's claim could be commuted for a lump sum payment. In the case of a fatal accident the employer had to pay a lump sum. The prudent employer insured himself against his liability by taking out a policy, but except in the case of mines he was not compelled to insure. Disputed claims were not the subject of legal actions but of arbitration proceedings. In default of a special arbitrator being appointed, the County Court Judge for the district was standing arbitrator but the ordinary County Court fees were not payable, and some attempt was made to keep the proceedings fairly informal.

However, with Insurance companies in the background, there was in practice much hard legal fighting which was often carried as far as the House of Lords. When the Beveridge scheme against insecurity was launched the opportunity was presented of including industrial injuries in a comprehensive scheme of National Insurance. On 26th July, 1946, the National Insurance (Industrial Injuries) Act, 1946, received the royal assent, and its full title is "An Act to substitute for the Workmen's Compensation Acts, 1925 to 1945, a system of insurance against personal injury caused by accident arising out of and in the course of a person's employment and against prescribed diseases and injuries due to the nature of a person's employment, and for purposes connected therewith". The words "personal injury caused by accident arising out of and in the course of a person's employment" are carried forward from the Compensation Acts, and subject to what is said below are intended to serve as a definition of accidental industrial injury.

Certain features of the compensation system which were relevant to claims against an employer are not relevant to claims for benefits from an Insurance Fund and have been dropped. The settlement of disputed claims under the new Act follows very closely the well-established system for claims under the Unemployment Insurance Acts. The new scheme is also linked to the Family Allowances Act, 1945, and to the general insurance embodied in the National Insurance Act, 1946, which received the Royal Assent on 1st August, 1946.

As a preface to the consideration of the National Insurance (Industrial Injuries) Act we can now examine more in detail what it derives from the Compensation Acts. These Acts gave compensation as a general rule where "personal injury by accident, arising out of and in the course of the employment, is caused to a workman". It is obvious that this provision makes no direct reference to

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negligence, and that so long as the accident arises out of and in the course of the employment, the cause of the accident is immaterial and the fact that there has been such an accident is the only point to be considered. The words " arising out of and in the course of the employment " have been the subject of continuous litigation, and though the proportion of cases in which there was any doubt was very small compared with the enormous number of claims made under the Act, yet there were enough decisions on this one clause to make a small treatise by itself. These words have been retained in the Industrial Injuries Act, 1946, in default of any better suggestions.

The exact meaning of the word " accident " has been the subject of many decisions and the best summary of these decisions is to be found in Part III of the Report of the Departmental Committee on the Act of 1906, to which reference has already been made. The following is a quotation from that Report : " The meaning of the term ' accident ' is now well settled by judicial interpretation, and no objection has been made, as far as we can ascertain, to the construction which has been placed under the word. In the earlier cases the Court of Appeal held that the idea of something ' fortuitous and unexpected ' was involved in the term ' accident '. The House of Lords, however, have applied a construction which is more favourable to the workman. In the words of Lord Macnaghten,¹ ' the expression " accident " is used in the popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not expected or designed.' By a later case this definition was extended and it was decided that the mishap or occurrence must be looked at from the worker's standpoint, and that whatever its cause or origin it will be treated as accidental unless designed by the workman himself.² This definition has been held to be wide enough to include such extreme cases as heat-stroke, chill developing into inflammation of the kidneys, the rupture of an aneurism in so advanced a state that it might have burst during sleep, and murder. While an accident must be due to some particular occurrence at some particular time, this condition does not necessarily exclude disease. For example, a workman contracted anthrax. It was found that at a particular time a bacillus from infected wool which he was sorting had alighted on a susceptible spot—namely the eye, and set up the complaint. These circumstances were held to constitute an ' accident '. And

¹ *Fenton v. Thurley and Co.*, 1903, A.C., 443, at p. 448.

² *Trim Joint Districts School v. Kelly*, 1914, A.C. p. 7.

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in the case of *Grant v. Kynoch*¹ the death of a workman who had contracted blood poisoning set up by germs gaining access through a scratch on the leg was decided by the House of Lords to have been due to accident. In that case it was impossible to say with certainty when the infection occurred, but the Lord Chancellor observed that while it was essential that there should be 'some particular occurrence happening at some particular time . . . what that particular time was is immaterial, so long as it reasonably appears that it was in the course of the employment'. Diseases of gradual onset, such as lead-poisoning, are on a different footing. These cases are not accidents, because they are not traceable to any particular occurrence in the course of the employment."

This summary may be supplemented in one or two respects. For instance, it has been held that the happening of the accident in the course of employment may be an inference from the circumstances of the employment. A case which was taken to the House of Lords is of considerable importance on this point. A miner in the employment of a colliery company died in hospital on 14th December, 1917, after an operation for internal strangulated hernia. On the following day a statutory notice of accident was given to the company and a claim for compensation made on behalf of the widow and dependent of the deceased. The ground of claim was the death of the deceased resulting from personal injuries received by him in lifting tubs in the course of his employment on 7th December, 1917. The claim came before a County Court judge in due course and was resisted by the employers on the grounds that no injury to the deceased by accident arising out of and in the course of his employment had been caused and that his death did not result from any such injury, but was due to natural causes. Medical evidence was given to the effect that the hernia might have been caused by a variety of strains such as over-exertion at work, or sneezing, coughing, or vomiting. There was no evidence of a strain at any defined moment of the work of the deceased. The County Court judge allowed the claim. The Court of Appeal held that the claimant had not discharged the burden of proof which lay upon her and set aside the award in her favour. The House of Lords restored the award of the County Court judge for the following reason: "On a claim for compensation under the Workmen's Compensation Act, if the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then the applicant fails to prove his case. But where the known facts are

¹ 1919 A.C. 765.

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not equally consistent, where there is a ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the arbitrator is justified in drawing an inference in his favour."¹

Again, though a workman is not deprived of his compensation because he has some weakness which makes an accident, which would have no serious consequences for any ordinary man, a serious accident for him, yet if a man is merely seized with illness at his work and no connection between the work and the sudden illness can be shown, then there is no claim for compensation. Thus compensation was refused in two cases, in one of which the workman had a fatal apoplectic fit at work and in the other the workman had a fatal attack of long-standing angina pectoris. In neither case was there any evidence of strain or special exertion connecting the work with the sudden illness.

The accident need not be an accident to the workman, so long as the injury of which he complains is *directly* due to the accident. In one case a miner was at work in a pit and an accident took place in a shaft which made it impossible for the workmen to use their usual exit from the pit. The miner was told to leave the pit by another shaft, where he had to wait an hour and a half before he could ascend. He had to wait in a cold place, and he had been sweating at his work. He caught cold, pneumonia supervened and he died. The House of Lords held that there had been an accident interfering with the normal working of the mine and in consequence of that accident the man had been exposed for a prolonged period to severe climatic conditions and his illness was due to this exposure. His injuries were due to accident arising out of and in the course of his employment, and compensation was payable.²

As regards the words "arising out of and in the course of the employment", it will not be possible to do more than indicate the general lines on which decisions have been given. We will begin with two cases very similar in some ways. A is on his way to work and is riding in a tram. At the moment he is not working for his employer, and any accidental injury that happens to him does not happen to him in the course of his employment, though the actual journey arises out of the employment. A decision of the House of Lords puts the matter this way: "The employment may begin as soon as the workman has reached the employer's premises or the means of access thereto. And in the same way the employment

¹ *Lancaster v. Blackwell Colliery Co.*, H.L. (E) 122, L.T., 162.

² *Coyle v. John Watson, Ltd.*, H.L., 1915, A.C. 1.

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may be considered as continuing until the workman has left his employer's premises. The case would be different if the workman was at the time of the accident on the public highway to and from his work. His employment cannot be considered as having begun if he is merely in transit in the public street or road to and from his employer's premises." ¹

B is on the same tram, but he is there because the foreman sent him on an errand and told him to go by tram. He is working for his employer and any accidental injury that happens to him arises out of and in the course of his employment. The tram overturns and A and B are both injured. A is not entitled and B is entitled to compensation. It was only in 1917 that it was finally ruled by the House of Lords that B in these circumstances was entitled to compensation. Up to that time the decision had been that the ordinary risks of the street to which both workmen were alike exposed could not be risks arising out of employment, but must be classified under some other title, such, for instance, as "transit risks". As this point is one of considerable practical importance some details of the circumstances and judgment are given. A boy of sixteen was employed as a plumber's mate by a firm of builders in London. In the course of his employment he was frequently sent on errands to different parts of the town, and when so employed used often to ride a bicycle supplied by his employers for that purpose. One day in August, 1915, as he was riding through the streets on his bicycle according to his instructions to fetch something wanted in the business, he came into collision with a motor car and his leg was broken. The County Court judge and the Court of Appeal disallowed the claim, on the ground that although the accident had happened in the course of his employment it was not one arising out of the employment, as he was only incurring an ordinary risk of the streets, which was shared by all the numerous members of the public who rode bicycles in the street. The House of Lords held that the boy was entitled to compensation on the ground that whenever a servant in the course of his master's business has to pass along the public streets, whether on foot or on a bicycle, or on an omnibus or car, and he meets with an accident by reason of the risks incidental to the streets, the accident is one arising out of as well as in the course of his employment. The use of the streets by a workman to get to and from his work stands on a different footing, but as soon as it is proved that the work itself involves exposure to the perils of the street, the workman is entitled to compensation for any injury so caused, and the fact

¹ *Stewart and Sons, Ltd., v. Longhurst*, 1917, A.C. 249.

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that the risk he runs is common to others does not deprive him of his right to compensation if in the particular case the risk arises out of the employment. Further, it is immaterial whether the nature of the employment involves continuous or only occasional exposure to the danger of the streets.¹

A feature of modern large scale industry is the provision by the employer of transport to and from his works. There is an express provision in the 1946 Act on this point as follows: An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle be deemed to arise out of and in the course of the employment if two conditions are satisfied—

(1) the accident would have been deemed so to have arisen had he been under such an obligation; and

(2) at the time of the accident the vehicle is being operated by or on behalf of the employer, or some other person by whom it is provided by arrangement with the employer, and it is not being operated in the ordinary course of a public transport service.

As regards the first condition it will appear later that accidents can occur in the course of the employment but yet do not arise out of the employment. The condition is a warning that the provision is really only dealing with the former point, and in framing the section the draftsman may have had *Weaver v. Tredegar Iron and Coal Co.* (1940 A.C. 955) in mind.

The following is an important statement as regards sailors leaving and returning to their ship after permission to be absent on leave: "If the ship is lying at a quay which forms part of a public highway by a river or estuary, the sailor's employment for this purpose ceases when he has got off the gangway connecting the ship with the quay, and it begins again on his return when he reaches the shore end of the gangway. The employer will be liable if the accident happens after the sailor on his way back has got on to the gangway, and also if he was close to the shore end of the gangway, but, in the darkness or fog, failed to get upon it and fell into the water. On the other hand, if the ship is lying in a dock to which the public have not access as a right, and to which only persons coming on business are admitted, liability begins when the sailor enters the dock. The same principle is applied as regards cesser of liability."²

¹ *Dennis v. White and Co.*, 1917, A.C. 479.

² *Davidson v. McRobb*, 1918, A.C. 304.

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The question of accidents in the dinner-hour on the employer's premises has also been discussed by the House of Lords. The defendants had a canteen for their workpeople which they could use or not as they pleased. To get to this canteen in the daytime the machine hands had to leave the machine building and cross the street. On 2nd October, 1918, a female machinist went to the canteen for her mid-day meal. Having had her meal, and while she was descending the staircase from the dining room to return to work she slipped and broke her ankle. She was awarded compensation and this was confirmed by the House of Lords. They held that although in general a workman could not properly be said to be "in the course of his employment" during his dinner hour, the "hour" was not a mere matter of sixty minutes, and it might well be that the workman during part of that time and while doing something quite different from working at his machine was in fact in course of his employment. In this case when the accident happened the claimant had finished her dinner and had left the canteen, and she was coming down the stairs which were provided by her employers to enable her to get from one part of her employers' premises to another part where her work lay. There was evidence to justify the County Court judge in finding that the stairs were part of the premises where the claimant was employed, and that while passing down these stairs to where her actual work lay she was in the course of her employment. Where a workman during the hours of labour and while engaged in a matter ancillary or incidental to the work he is employed to do meets with an accident in a place provided by his employer and in which he has no right to be except by virtue of his employment, such accident, in the absence of special circumstances, occurs in the course of his employment.¹

When we come to consider accidents arising out of the employment we find two main classes of accidents which can fairly be said not to arise out of the employment—(a) accidents which arise from a risk which is not specially connected with the employment, and (b) accidents which arise from a risk which is created by the workman himself in the course of doing something which he is not employed to do.

In the first class there may be instanced a case in which an agricultural labourer was stung by a wasp with consequences more serious than usual. It was held that the labourer was no more likely to be stung by a wasp at his work than elsewhere, and the accident therefore could not be said to have arisen out of his

¹ *Redford v. Sir W. G. Armstrong, Whitworth and Co.*, 1920, A.C. 757.

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employment. In some cases, however, the risk, though common to persons in the employment and outside the employment, as, for instance, the risk of an air raid, may be increased by some feature of the employment. In a war-time case the facts were as follows: A workman who was employed as a porter and messenger by a varnish merchant was sent on an errand to an oil and colour warehouse in London. While he was in the building in pursuance of his instructions an air raid took place, and the building was struck by a bomb, set on fire, and collapsed. The workman was suffocated in the fire and his widow claimed compensation. In the County Court the judge, on the facts proved, held that there was a special risk of fire in the building where the deceased was employed at the time of the raid owing to the large quantity of highly inflammable goods upon the premises; that *he was, therefore, exposed to a risk incidental to his employment to which the general public was not equally exposed*, and he made an award in favour of the widow. This was confirmed by the Court of Appeal.¹ The House of Lords has also discussed this question of the connection of the accident with the employment in a case in which the facts were as follows: A woman in the ordinary course of her employment was at work in a shed when a wall in the course of erection upon the adjacent premises collapsed and fell upon the shed, injuring the woman. The wall was not the property of her employer, nor on his premises, nor had he any interest in it. She claimed compensation, and the only question in dispute was whether the accident was one arising out of her employment. The Court of First Instance held that it was, the Court of Sessions (Scotland) reversed this decision, and the House of Lords restored the award of the Court of First Instance. The House of Lords held that in order that an accident might be said to arise out of employment it is not necessary to prove that the character of the employment has actively contributed to its occurrence. "There were many kinds of accidents which occurred in the course of employment which did not in any sense arise out of the employment, as there might be no reason why such an accident might happen to a man in one situation rather than another. But when a man was ordered to work under a particular roof and that roof fell upon him, the accident did not properly fall within that category. The particular roof could only fall in one place, and the presence in that place of the person injured was entirely due to his employment. The Act excluded the necessity of looking for remoter causes, and the question in a case like the present was usually the simple one: Had the accident arisen

¹ Bird v. Keep, C.A., 1918, 2 K.B. 692.

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because the claimant was employed in the particular spot in which the roof fell? If so, the accident had arisen out of the employment, and there was no need to go back and search for the cause of the roof falling. Only the proximate cause should be regarded under the Act, and it was immaterial whether the cause of the roof falling was some defect in itself, or the collapse of a neighbouring wall, or a stroke of lightning. It was enough that by the terms of her employment the claimant had to work in this particular shed, and that she was, while so working, injured by an accident to the roof of the shed.

"Against such an accident her employer was an insurer under the Act."¹

Instances of the second class of excluded accidents—viz. those which arise from a risk which is created by the workman himself in the course of doing something which he is not employed to do, are constantly to be found in the Law Reports. Where a workman has thus created a risk by going outside his employment, the case is often described as one of "added peril".

The following is a typical case: A workman in the employ of a dock company was employed in copper work on board a ship lying in dock. He was a member of a shift which worked continuously for twenty-four hours, beginning about 8 a.m., and then had twenty-four hours off. Certain fixed times were allowed for meals, one of them being a period of half an hour between 3 a.m. and 4 a.m. for what was called the short breakfast. One morning during this half hour the man was found dead in a part of the ship where he had made himself a fire of coke in an open iron vessel to keep himself warm. The hatch was closed and he had made himself comfortable near the fire with some sacks to lie on and a newspaper to read. His death was caused by inhaling carbonic oxide produced by the coke fire. The fire was not in any way required for his work and he was not authorized to make it. It was very dangerous to use the coke fire with a closed hatch. The dependents of the deceased workman claimed compensation, but the County Court judge refused to make an award in their favour. The judge held that the workman had added an unnecessary peril to his employment, a peril of his own choosing and one which his employers had not sanctioned, and therefore the accident was not arising out of the employment. The Court of Appeal supported this view of the case and dismissed an appeal made to it.²

In a more recent case the facts disclosed were that a miner in

¹ *Thom v. Sinclair*, 1917, A.C. 127.

² *Armistead v. Humber Graving Dock Co., Ltd.*, C.A., 1918, 120 L.T. 161.

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the employment of a colliery company on 27th September, 1918, while at work in the pit struck a match to light his pipe. The consequence was an explosion by which he was so seriously injured that he died. It was an offence under the Coal Mines Act, 1911, to light a match in that pit or to have a match in possession. Notices of the Act were posted at the colliery, and the regulations were known to the miner. In the Court of First Instance the decision was in favour of the man's dependents. The House of Lords held that the conduct of the deceased added a peril which was not incidental to his employment. The proximate cause of the accident was the act of the man in striking a match, which the terms of his employment forbade him to have in his possession or to strike. The injuries were not caused by anything arising out of his employment but by something extraneous to his employment. The case was a typical example of an added risk which took the case out of the Act. No compensation was therefore payable.¹

For instance, where a workman is doing something he is employed to do but in a foolhardy and dangerous way, thus adding to the peril of his employment, he is none the less now held to be covered and entitled to compensation.²

This doctrine of added peril was invoked in a different class of case and stretched in mining cases to cover all cases of breaches of the regulations under which mines are conducted, so that a miner who was carrying out a duty but in a forbidden way was disqualified equally with the man who broke regulations for his own pleasure as, for instance, by taking his pipe and matches down the mine. This was felt to be an injustice and the Workmen's Compensation Act, 1923, by section 7, drew a distinction between cases in which the worker at the time of the accident was not doing his job, and those in which the worker was doing work but doing it in some wrong way, or being disobedient. Under the law as it was in 1923 serious and wilful misconduct on the part of the worker was a bar to his claim unless his injury had resulted in serious and permanent disablement, and section 7 had accordingly to contain a reference to serious and wilful misconduct. The Industrial Injuries Act, 1946, does not include any provisions about serious and wilful misconduct but apart from that it reproduces in section 8 this distinction. Section 8 provides that an accident shall be deemed to arise out of and in the course of an insured person's employment, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations

¹ *Campbell or Robertson v. Woodliffe Coal and Coke Co.*, 1920, Sc. (H.L.) 71,

² *Harris v. Associated Portland Cement*, 1938, 55 T.L.R. 302 (H.L.).

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applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if (a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid, or without instructions from his employer, as the case may be, and (b) the act is done for the purposes of and in connection with the employer's trade or business.

In *Wilson and Clyde Coal Co. v. McFerrin*, 1926, A.C. 377, it was laid down that section 7 of the Act of 1923 did not apply to the case of a workman who arrogated to himself duties which he was neither engaged, nor entitled to perform, whether the act which caused the injury is the subject of a specific prohibition or not.

There is one more practical point to consider under this topic of "added peril". Of recent years considerable attention has been paid, especially in mines, to rescue work, and specific provision has been made for compensation to be payable for accidents arising in the course of such work. In the Industrial Injuries Act, 1946, a general clause has been inserted dealing with accidents happening while emergency work is being done. Section 19 runs as follows: "An accident happening to an insured person in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour, or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimize serious damage or property."

Finally the Act of 1946 contains a rule as to the onus of proof worded as follows: "An accident arising in the course of an insured person's employment shall be deemed *in the absence of evidence to the contrary* also to have arisen out of that employment."

We must now consider the scope of the Industrial Injuries Act so far as concerns the classes of persons insured under it. Here again it closely follows the scheme of the Workmen's Compensation Acts. There is a general inclusive clause. Then specified exclusions are laid down. A formal provision for preventing anomalies is a new feature.

The one material difference concerns "black-coated workers". The Workmen's Compensation Act, 1906, was the first act to include them with "manual workers" in a national scheme, but in their case with an income limit. This limit was from time to time raised, and it disappears in the 1946 legislation.

The main inclusive clause defines insurable employment as

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employment in Great Britain under any contract of service or apprenticeship, whether written or oral, and whether expressed or implied. There are elaborate provisions as to persons manning or piloting ships or aircraft, for which reference should be made to the First Schedule of the Act.

There is the specific inclusion of employment in Great Britain in plying for hire with any vehicle or vessel the use of which is obtained under any contract of bailment (other than a hire-purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise. This is the legal way of describing the usual type of taxi-driver and the like.

Lastly comes a category connected with what has already been said about rescue work, etc., expressed in these terms: "employment in Great Britain as a member or as person training to become a member of any such fire brigade, rescue brigade, first aid party, or salvage party at a factory, mine, or works as may be prescribed, or any such similar organization as may be prescribed."

We come now to the exclusions. Some public and local authorities are able to make provisions for their staffs as beneficial as the national scheme. The Minister may by regulations except any prescribed employment under a public or local authority in Great Britain. Then follow certain exclusions dealing with persons manning, or piloting ships or aircraft. Next comes the exclusion of employment of a casual nature not being (a) for the purposes of the employer's trade or business; (b) as a pilot on board a ship or vessel; (c) employment as a golf caddy or the like engaged or paid through a club; and (d) employment on rescue work, etc. Exclusion (a) follows a similarly worded exclusion under the Workmen's Compensation scheme, which on several occasions has been the subject of judicial decisions.

In an Irish case, which was ultimately decided by the House of Lords on appeal, it appeared that the workman in question was fatally injured while thatching a farmer's house. There was plain evidence that he was a casual worker, as he got his living by working for different farmers doing jobs of thatching and turf cutting. The judge found as facts that it was the common practice in that part of the country for farmers to thatch their farmhouses either themselves or by their servants, and that at the time of the accident the deceased man was engaged in work connected with his employer's trade or business.¹

In another case a firm of timber merchants and saw millers bought a travelling crane, intending to erect it in their new works.

¹ *Manton v. Cantwell*, 1920, A.C. 781.

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The foreman engaged some temporary labour to dismantle the crane. One of these "casual" men was on the third day of his employment badly injured. It was argued that he was not employed for the purposes of the firm's trade or business. It was held in the Court of Appeal that whether the dismantling of the crane was part of the firm's usual business or not, they in fact made it part of their business. The claimant was therefore entitled to compensation.¹ On the other hand, where a woman was engaged in a private house for fourteen days as "temporary" cook during the absence on holiday of the regular cook, and injured herself in the kitchen, there was obviously no question of being employed for the purpose of the employer's trade or business, as running a private house is not a trade or business, and the only question was whether the work of a temporary cook was of a casual nature. It was held that the judge was entitled to hold that it was of a casual nature, and both conditions being satisfied the claimant was not a workman of a class within the benefits of the Act.²

Then follow exclusions of certain forms of family employment, as follows: (a) employment in the service of the husband or wife of the employed person; and (b) employment by relations in a direct line, or by a brother or a sister, in so far as the employment is in a private dwelling-house in which both employer and employed dwell, and is not employment for the purposes of any trade or business carried on there by the employer.

Experience under former national insurance schemes has shown the advisability of excluding work of a secondary character. Accordingly there are exclusions of employment that is ordinarily adopted as subsidiary employment only, or can be regarded as being inconsiderable. These exclusions can be defined by the Minister by regulations made with the consent of the Treasury.

There follows a power given to the Minister to provide for anomalous cases by regulations made with the consent of the Treasury.

In the Workmen's Compensation scheme among the exclusions were outworkers. This exclusion seems to have been based on the fact that the employer had not the control or management of premises on which outwork is done, and so had no means of guarding against accidents, and it was not fair to put upon him any part of the burden of accidents of such a character. These considerations do not apply to an insurance scheme, and outwork is not an excluded employment.

¹ Boothby v. Peter Patrick and Son, C.A., 1918, 35 T.L.R. 48

² Stoker v. Wortham, C.A., 1919, 1 K.B. 499.

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We have now dealt with the classes of persons covered by the Industrial Injuries Act, and may now pass on to the consideration of the financial provisions of the insurance provided by the Act. As in previous insurance Acts there are contributions and benefits. The direct benefits are confined to the insured, while the contributions are levied on other interested parties, namely their employers and the State.

The Industrial Injuries scheme begins by establishing the Industrial Injuries Fund, built up of contributions from every insured person and every employer of any such person, to which is added an Exchequer contribution estimated to be equal to one-fifth of the aggregate amount of these contributions.

The contribution is a weekly one, paid by the employer who in the first instance pays both his own contribution and that of the insured person. The employer has the right to recover from the insured person the amounts paid on his behalf by a deduction from his wages or remuneration and the necessary amendment is made in the Road Haulage Wages Act, 1938, the Catering Wages Act, 1943, and the Wages Councils Act, 1945. The Minister may make regulations for the payment of contributions by means of insurance stamps obtainable at the Post Office, affixed to insurance cards. This was the normal mode of payment under the schemes for health and unemployment insurance, and no doubt it will be continued under this Act and the National Insurance Act, 1946. It is not the only method, and an important alternative is for the Minister to sanction an arrangement whereby an employment exchange takes over all or any of the duties of the employer in connection with the payment of contributions. The amount of the contributions is fixed on the assumption that they will suffice for the payment of the benefits and the cost of administration. Provision is made for reports to be made from time to time by the Government Actuary on the adequacy or otherwise of the contributions to support the benefits. The scale of contributions is a simple one. The insured person and the employer pay the same amount. Insured persons fall into four classes. For men over the age of eighteen the weekly rate for employer and insured persons is fourpence each, involving an eightpenny stamp; for women the weekly stamp is sixpence; for boys under eighteen it is fivepence; and for girls under eighteen it is fourpence.

An employed child under the upper limit of the compulsory school age and his employer pay no contributions, and the child is not entitled to injury benefit except so far as may be provided by regulation.

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The Act provides for three classes of benefit, viz.: (a) injury benefit; (b) disablement benefit; and (c) death benefit.

Injury Benefit.—An insured person is entitled to this in respect of any day on which as the result of his injury he is incapable of work during the injury benefit period. Benefit is not payable for the first three days unless the incapacity lasts at least twelve days. The weekly rate of benefit is 45s., and for any day, one-sixth of the weekly rate. Juniors between seventeen and eighteen are only entitled to 33s. 9d. per week, and those under seventeen to 22s. 6d. per week. The injury benefit period is 156 days (Sundays being disregarded) beginning with the day of the accident.

Disablement Benefit.—This accrues to an insured person when as the result of his injury, (a) at the end of the injury benefit period he is suffering from loss of physical¹ or mental faculty which is likely to be permanent, or is "substantial"; (b) at some time after the end of the injury benefit period he becomes subject to such loss and it is "substantial" and likely to be permanent. Disablement is assessed in percentages, and "substantial" means not less than 20 per cent.

Detailed rules are laid down for the assessment of disablement, and regulations are to settle what is 100 per cent disablement, and may further define the principles of assessment. An assessment besides stating the percentage of disablement must specify the likely period of disablement. Cases of less than 20 per cent disablement take their disablement benefit in the form of a disablement gratuity which is a lump sum, varying with the percentage and the length of the period, and having a limit of £150. Regulations may provide for its payment by instalments.

Disablement assessed at 20 per cent or over entitles the insured to a disablement pension, which varies according to a scale from 45s. a week for 100 per cent disablement, to 9s. a week for 20 per cent disablement. There are deductions for insured persons under eighteen years of age. There are provisions for the increase of the pension for various reasons such as unemployability, or special hardship, or where constant attendance is needed, or during approved hospital treatment.

Allowance for a Child.—The Family Allowances Act, 1945, gives a weekly allowance for children other than the first child. An allowance of 7s. 6d. per week is given for that child as an addition to injury benefit in all cases, but is only added to disablement

¹ Disfigurement counts as loss of physical faculty even if there is no actual loss of faculty.

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pension when the beneficiary is entitled to an unemployability supplement or is receiving approved hospital treatment.

Allowance for an Adult Dependant.—Injury benefit is increased by 16s. a week (a) when the beneficiary is residing with and is wholly or mainly supporting his wife ; or (b) when the beneficiary is wholly or mainly maintaining a husband incapable of self support. Subject to prescribed conditions this allowance can also be paid when some other relative (not being a child) takes the place of the wife, or there is a female not being a child having the care of the beneficiary's child or children. This allowance can only be paid in respect of one person. The allowance is also payable as an addition to a disablement pension in the same circumstances as the child's allowance is payable.

Death Benefit.—This accrues normally for the benefit of the deceased's widow and children. A widow, who was residing with the deceased, or receiving periodical payments for her maintenance of a prescribed amount, is entitled to a weekly pension. If she remarries the pension is stopped but she receives a year's pay as a gratuity. The normal pension is 20s. a week but this is increased to 30s. a week (a) if she has a child entitled to the children's allowance ; or (b) if she is over the age of fifty at the deceased's death or attains that age ; or (c) if she is permanently incapable of self support. A widow who was separated from her husband does not receive more than he was paying for her maintenance.

A widower is entitled to a weekly pension of 30s. if his deceased wife was wholly or mainly maintaining him, and he is permanently incapable of self support.

Where the deceased leaves at least one child, there is a weekly allowance of 7s. 6d. for one child.

There are also provisions under stated circumstances for the payment of a pension or a gratuity to a parent of the deceased, to a relative of the deceased, and to a woman having the care of the deceased's children.

The Act imposes certain obligations, mainly derived from the Workmen's Compensation scheme on claimants, beneficiaries, and employers.

The Act does not precisely define these obligations but empowers the Minister to make regulations as to them.

As regards claimants and beneficiaries regulations may provide for such matters as the giving of a prescribed notice of the accident, for the making of claims within the prescribed time and in the prescribed manner, for a notice of any relevant change of circumstances, for periodical medical examination, for submission to

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appropriate medical treatment, and for attendance at any vocational training course, or industrial rehabilitation course. Finally they are told that it is their duty not to behave in any manner calculated to retard recovery.

As regards employers, regulations may provide for the making of reports of accidents, for the furnishing of information relevant to the determination of claims, and for the taking of such other steps as may facilitate administration.

Many of the minor details as to benefit, or its administration, must be passed over, but the following points may be noticed. Regulations made jointly by the Postmaster-General and the Minister may provide for payment of benefit through the Post Office. The benefit is inalienable and in the bankruptcy of a beneficiary does not pass to the trustee in bankruptcy. Benefit is suspended while the beneficiary is absent from Great Britain, or is undergoing penal servitude, imprisonment, or detention in legal custody. Regulations may provide for forfeiture of benefit up to a maximum period of six weeks if the beneficiary acts in a manner calculated to retard his recovery, or fails to comply with requirements as to his medical examination, or is guilty of obstruction or misconduct in connection with medical examination or treatment.

We now pass to a section of the Act entitled "Determination of Questions and Claims". There was plenty of past experience to make use of, as for instance the sections of the National Insurance Act of 1911, which set up an Insurance Officer, Courts of Referees, and an Umpire for dealing with claims to unemployment benefit, and the scheme for disability pensions made necessary by the 1914-18 war with its percentage system of disability.

What the Act calls "special questions" are to be determined by the Minister. These cover points such as (a) whether a person is in insurable employment, whether a worker or his employer is exempt from the payment of contribution, and the like; or (b) whether a case has been made out for an increase of pension because of the need of constant attendance, or how the limitations of the death benefit are to be applied. The minister's decision is final but he may refer any question of law arising in connection with points included in (a) above for decision by the High Court, and any person aggrieved by the Minister's decision on a point of law not so referred, may appeal to the High Court. These references and appeals are heard by a single judge of the High Court whose decision is final. Certain questions about children's allowances are to be determined in like manner as a corresponding question

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arising in respect of an allowance under the Family Allowances Act, 1945.

What the Act calls "disablement questions", that is whether there is a loss of faculty, and whether it is likely to be permanent, and at what percentage the disability should be assessed and what the period of assessment should be, are to be determined by a medical board with an appeal to a medical appeal tribunal.

Subject to these exceptions any claim for benefit, and any question arising in connection with the claim, are to be determined by an insurance officer, a local appeal tribunal, or the Commissioner. The Commissioner, and as many deputy Commissioners as may be needed, are to be appointed by the King and must be barristers of not less than ten years' standing. Regulations may provide for three of these to act together to settle a question of law of special difficulty, or for an assessor or assessors with special qualifications to be appointed to determine a question of fact or special difficulty.

The local appeal tribunal follows the precedent set by the Court of Referees, and consists of a chairman appointed by the Minister and of one or more members representing employers and an equal number of members representing insured persons. These members are drawn from panels constituted by the Minister. Regulations may provide for medical practitioners sitting with the Tribunal, either as members or assessors. The Insurance Officer appointed by the Minister is the first person to deal with a claim. All claims for benefit must be submitted forthwith to an Insurance Officer, and in general all questions arising in connection with any such claim, or with an award of benefit, must in the first instance be so submitted. The Insurance Officer must forthwith consider the claim or question, and if he thinks no special question arises he may do one of three things: (a) he may allow the claim in whole or in part, or determine the question in favour of the claimant or beneficiary; (b) he may refer the claim or question to the local tribunal and so far as practicable do this within fourteen days of the date of its submission to him; or (c) he may refuse the claim or determine the question adversely to the claimant or beneficiary. A claimant or beneficiary who is dissatisfied with the Insurance Officer's decision may appeal to the local appeal tribunal. It may be taken for granted that the regulations which the Minister is empowered to make as to the procedure of the local appeal tribunal will keep procedure, as in the Court of Referees, as informal as possible, and will allow claimants to be represented by other persons whether they have professional qualifications or not. The Act itself

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only lays down two rules. A local appeal tribunal must record in writing all their decisions, and must include a statement of their findings on questions of fact material to the decision. Subject to the leave of the tribunal or the Commissioner, an appeal lies to the Commissioner from any decision of a local appeal tribunal (a) at the instance of an Insurance Officer ; (b) at the instance of the claimant or beneficiary in certain claims to death benefit ; or (c) at the instance of an association of employed persons of which the claimant or beneficiary is or was a member.

The guiding principle in giving leave to appeal is that there is a principle of importance involved, or that there are other special circumstances justifying it.

As the consequences of an accident are not always apparent at the time of its happening provision is made for the determination of the question whether an accident is an industrial accident, even if a claim to benefit is not being made. It is part of the normal procedure on a claim to record expressly that the accident was industrial and a claimant is entitled if the circumstances justify it to have this point determined notwithstanding that his claim is disallowed on other grounds.

Procedure in general will be governed by regulations made by the Minister on lines now well established by prior legislation, but a new point is that there may be a provision for the holding of an inquiry in connection with the consideration of any question by the Minister. At such an inquiry the witnesses may be examined on oath.

It should be noted that except in the case of a gratuity, benefit is payable under an award notwithstanding that an appeal is pending.

In the Workmen's Compensation Scheme provision was made for treating certain industrial diseases as if they were accidents. By the year 1928 some thirty industrial diseases had been brought within the scheme and others have been added since, mostly as the result of new industrial processes. Part IV of the Industrial Injuries Act makes similar provision in these terms.

"An insured person shall be insured also against any prescribed disease and against any prescribed personal injury not caused by accident, being a disease or injury due to the nature of that employment and developed on or after the appointed day."

A disease or injury may be prescribed by the Minister if he is satisfied that (a) it ought to be treated as a risk of the occupation and not as a risk common to all persons ; and (b) it is such that, in the absence of special circumstances, the attribution of particular

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cases to the nature of the employment can be established or presumed with reasonable certainty.

The Act follows the example of unemployment insurance legislation in setting up an Advisory Council. This is now an accepted device for mitigating the dangers of bureaucratic legislation. Where the Minister proposes to make any regulations under the Act he must (unless the urgency of the matter makes it inexpedient) refer the proposals in the form of draft regulations or otherwise to the Advisory Council for consideration and advice, and the Minister may from time to time refer to the Council for consideration and advice such questions as he thinks fit.

The Act does not lose sight of the importance of preventing accidents. The Minister may promote research into the causes and incidence of, and methods of prevention of accidents, injuries, and diseases against which persons are insured, or insurance is contemplated. He may employ persons to conduct such research, or he may assist research which is being done already.

The Act also makes provision for the after care of injured persons. It does this in two ways. The Minister may make arrangements with the Minister of Labour that persons entitled to disablement benefit may take full advantage of vocational training courses, industrial rehabilitation courses, and other facilities under the Disabled Persons (Employment) Act, 1944. He may also make arrangement for the supply free of charge or at a reduced charge of artificial limbs and the like. The Act allows, subject to approval by the Minister, supplementary schemes which provide increased benefits, or payment in cases unprovided for, but the provision is not to be derived from moneys provided by the Exchequer.

Under the Factories Act, 1937, the Coal Mines Act, 1911, and the Metalliferous Mines Act, 1872, where a fine has been imposed for an offence which has occasioned loss of life or personal injury, the Home Secretary¹ may (if he thinks fit) direct such fine to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by the offence.

As the maximum fine under the Factory Act is £100, and under the Mines Acts is £20, there is no great sum available, and as the breach of the statutory duty is a ground for Common Law proceedings, the occasions on which this power is worth exercising are inconsiderable in number.

¹ See note on p. 25 and on p. 40. .

CHAPTER III

NOTIFICATION AND INVESTIGATION OF ACCIDENTS AND INDUSTRIAL DISEASES

NOTE.—In this chapter the terms Secretary of State, Home Office, and Home Secretary must be read in the light of the note on p. 25 and on p. 40.

The subject of this chapter may seem a very dull matter, but it has a most important bearing on the development of safety and health regulations. The extension of notification to dangerous occurrences as well as to accidents is a further step in the utilization of experience with a view to diminishing the likelihood of accidents in the future. Notification is only really useful as the prelude to inquiry and recommendations, and without such development is nothing more than a cog in the wheel of statistics which revolves annually but gets nowhere.

The historical approach affords certain advantages. The Metalliferous Mines Act, 1872, contains only a single section dealing with this part of our subject, but it is of some interest as showing the state of legislation seventy-five years ago. It is to the effect that where a death or deaths have been caused by accident in the mine, the coroner, when he holds his inquest, must give the district inspector of mines such notice as will give him a reasonable chance of attending the inquest. A section to this effect appears in almost all subsequent Acts and it will be sufficient for our purpose to give details of the corresponding section of the Factories Act, 1937, when we come to the consideration of that Act.

The Notice of Accidents Act, 1894, covered accidents arising in the course of the construction, use, working, or repair of any railway, tramroad, tramway, canal, bridge, tunnel, or other work authorized by any local or personal Act of Parliament. Notice of certain accidents was to be given to the Board of Trade. The reader will recollect that legislation, both as regards hours of working and regulations for the safety of railway workers, had given the administration of the law to the Board of Trade. The Act also applied to the use or working of any traction engine or other engine or machine worked by steam in the open air. Further, the Board of Trade was given power to hold a formal investigation in the case of a serious accident.

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By the joint operation of the Act of 1894 and the Notice of Accidents Act, 1906, the Board of Trade was entitled to notice of any accident in the employments mentioned in the Act of 1894 which caused to any person employed therein either loss of life or such bodily injury as to cause him to be absent throughout at least one whole day from his ordinary work.

The notice of Accidents Act, 1906, also dealt with accidents arising from work at mines and quarries, or at railway sidings attached to them.

Meanwhile the Factory and Workshop Act, 1901, had made provision for the notification of accidents, and also of five specified industrial diseases. As far as regards accidents in factories, a complication was introduced as the Notice of Accidents Act, 1906, repealed the section of the Act of 1901 which dealt with notification of accidents.

So far as these accidents were concerned the Act of 1906 had a larger range than the repealed clause of the Factories and Workshop Act, 1901, and it contained a power to extend its provisions as to notice of accidents to such dangerous occurrences as might be prescribed. Very soon after the Act was passed a special order scheduled three sets of dangerous occurrences. A revised order was made in 1928, namely *S.R. and O.*, 1928, No. 876. This covered the following cases: (1) bursting of a revolving vessel, wheel, grindstone or grinding wheel moved by mechanical power; (2) breaking of a rope, chain, or other appliance used in raising or lowering persons or goods by aid of mechanical power; (3) explosion or fire causing damage to the structure of any room or place in which persons are employed, or to any machinery or plant contained therein, and resulting in the complete suspension of ordinary work in such room or place, or stoppage of machinery or plant for not less than five hours where such explosion or fire is due (a) to ignition of dust, gas, or vapour; (b) ignition of celluloid; (c) electrical short circuit or failure of electrical apparatus; and (4) any other explosion or fire affecting any room in which persons are employed and causing complete suspension of ordinary work therein for not less than twenty-four hours.

As regards railways the department now in charge is the Ministry of Transport, and acting under various powers the Minister early in 1934 issued a very elaborate order under the title of the Railway (Notice of Accidents) Order, 1934, being *S.R. and O.*, 1934, No. 64. A good deal of this order is concerned with the safety of passengers as well as with the protection of railway workers. The provisions with regard to the latter are as follows: Notice must be given to

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the Minister of Transport of any accident on premises in the occupation of a railway company which is attended with loss of life or personal injury to any person whomsoever, with a proviso that accidents to railway employees that disable for less than three days need not be reported, unless the accident is reportable under some other provision. Accidents to railway employees must also be reported if they occur on any line or siding having a junction with the railway, but not actually in its occupation. The most interesting part of the Order is concerned with the reporting of dangerous occurrences. No less than nineteen of such occurrences are specified, arranged in three groups.

The careful reader will have noticed that as far as the *use of* railways is concerned provision is made for notice of accidents under both the Notice of Accidents Act, 1894, and the Railway (Notice of Accidents) Order, 1934. The passing of the Factories Act, 1936, gave an opportunity to simplify this position, and also to restore the notification of accidents in factories as a subject for inclusion in a factory Act. To do the first the Factories Act, 1937, deletes certain words in the Notice of Accidents Act, 1894, and so confines the operation of that Act to the *construction or repair* of any railway, tramroad, gas work, harbour dock, part, or pier quay. To do the second it repeals such parts of the Notices of Accidents Act, 1906, as relate to factories and workshops. It then in Part V deals with the whole subject of notification and investigation of accidents and industrial diseases in the following manner :—

Notification of Accidents.—Where any accident occurs in a factory which either (a) causes loss of life to a person employed in that factory, or (b) disables any such person for more than three days from earning full wages at the work at which he was employed, then written notice of the accident, with prescribed particulars, must at once be sent to the district inspector.

If the disablement notice is followed by the death of the injured person notice of the death must be sent by the occupier of the factory as soon as he knows of the death.

Dangerous occurrences.—If the Secretary of State considers, that because of the risk of serious bodily injury to persons employed it is expedient that notice should also be given in every case of any special class of explosion, fire, collapse of buildings, accidents to machinery or plant, or other occurrences in a factory, he may by regulations extend the provisions as to accidents to any such class of occurrences, whether death or disablement is caused or not. A time may be prescribed within which the notice must be sent in.

Notification of industrial diseases.—Every medical practitioner

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attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorous, arsenical, or mercurial poisoning, or anthrax contracted in any factory must send to the Chief Inspector of Factories at the Home Office in Whitehall a notice stating the name and full postal address of the patient and the disease from which the patient is suffering and the name and address of the factory in which he is or was last employed, and in return for this the medical practitioner is entitled to a fee of half a crown. If a medical practitioner when required by this section to send a notice, fails forthwith to send it, he is liable to a fine of forty shillings. But though the employer cannot be expected to diagnose these poisonings, yet from time to time he may actually know of their occurrence, so the section goes on to enact that written notice of every such case occurring in a factory or workshop shall forthwith be sent to the district inspector and to the examining surgeon, and the provisions with respect to accidents shall apply to any such case.¹

There is a similar obligation on the employer contained in regulations made under the Lead Paint (Protection against Poisoning) Act, 1926, which was passed to protect persons employed in the painting of buildings.

Inquest in case of death.—Where a coroner holds an inquest on the body of any person whose death may have been caused by any notifiable accident or disease, the coroner must adjourn the inquest unless an inspector or some person on behalf of the Secretary of State is present to watch the proceedings, and must, at least four days before holding the adjourned inquest, send to the district inspector notice in writing of the time and place of holding the adjourned inquest. If the accident has only occasioned the death of one person, and the coroner's notice has been sent at such time as to reach the inspector not less than twenty-four hours before the time of holding the inquest, it shall not be imperative to adjourn the inquest if the majority of the jury think it unnecessary. Then follows a provision for keeping the jury impartial.

The following people may attend the inquest, either personally or by counsel, solicitor, or agent, and may examine any witness—namely (a) any relative of the deceased ; (b) any inspector ; (c) the occupier of the factory or workshop where the accident occurred ; (d) any person appointed by the order in writing of the majority of the workpeople employed in such factory or workshop ; and (e) any

¹ The Secretary of State may as respects all factories, or any class of factories, by regulations, extend notification to any other disease. *S R. and O.* 1936, No. 1386, brings compressed air illness under these provisions.

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person appointed in writing by a trade union, friendly society, etc., to which the deceased at the time of his death belonged or to which any person employed in the factory belongs, or by any association of employers of which the occupier is a member.

Where evidence is given at any inquest at which an inspector is not present of any neglect as having caused or contributed to the accident or disease, or of any defect in or about the factory appearing to the coroner or jury to require a remedy, the coroner must send to the district inspector notice in writing of the neglect or default.

Under section 68 if the accident is of sufficient importance, the Secretary of State may direct the holding of a formal investigation as to any accident occurring or case of disease contracted in a factory and its causes and circumstances. The investigation must be made by a competent person, who may be assisted by an assessor or assessors possessing legal or special knowledge. The Court thus constituted meets in public in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the accident and enabling the Court to make its report. It has the necessary powers for compelling persons to give evidence. The Court must make a report to the Secretary of State stating the causes and circumstances of the accident or case of disease and adding such observations as it thinks right to make. The Secretary of State has the right to publish the reports of investigating Courts.

Investigations by Examining Surgeon.—It is the duty of the examining surgeon to investigate and report upon (a) cases of death or injury caused by exposure in a factory to fumes or other noxious substances or due to any other special cause specified in instructions of the Secretary of State as requiring investigation ; and (b) any case of death or injury which the district inspector acting on instructions of the Secretary of State may refer to him for that purpose ; and (c) upon any case of disease of which he receives notice under the Act (see p. 213 *supra*).

The total number of accidents reported under factory legislation keeps fairly constant, the chief factor in variation being apparently the state of trade. The proportion of fatal accidents shows a considerable reduction during the last twenty years. In the year 1913 the total number of accidents was 119,982, of which 1,309 were fatal. In 1919 the total was 126,023, of which 1,385 were fatal. The figures for 1932, a year of great depression, were 106,164, of which 602 were fatal, and the figures for 1933, when recovery was beginning, were 113,260, of which 688 were fatal. In the year 1933 the greatest number of fatal accidents in any single industry

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was 91 in the smelting, conversion, rolling, founding, etc., of metals. Next comes the building industry with 80 fatalities, followed by docks with 69.

The perusal of any Annual Report of the Chief Inspector of Factories will afford abundant evidence of the thought which inspectors give to the preventive side of their work.

In the case of coal mines the Coal Mines Act, 1911, contains independent provisions for the notification of accidents and the section of the Notice of Accidents Act, 1906, which deals with dangerous occurrences is repeated in the Act of 1911.

Section 80 of the Coal Mines Act, 1911, requires that notification shall be made of accidents occurring in or about any coal mine, whether above or below ground, in three classes of cases, namely :—

(1) An accident causing loss of life to any person employed in or about the mine.

(2) An accident causing any fracture of the head or of any limb, or any dislocation of a limb, or any other serious personal injury to any person employed in or about the mine ; and

(3) An accident caused by an explosion of gas, or coal dust, or any explosive, or by electricity or by over-winding, or by any other such special cause as the Home Secretary specifies by Order, and causing any personal injury whatever to any person employed in or about the mine.

The notification must be sent to the inspector forthwith and must be in writing and contain certain prescribed particulars. In the case of an accident causing loss of life or serious personal injury a notification must also be sent to the persons (if any) nominated by the persons employed at the mine for the purpose of receiving notice on their behalf.

When the inspector gets the notification he will want to see the place in the mine where the accident happened, so far as possible in the same condition as it was when the accident happened, or immediately after the accident happened. In order to secure this there is a provision in section 80 to the effect that where loss of life or serious personal injury has immediately resulted from an accident, the place where the accident occurred must be left as it was immediately after the accident until the expiration of at least three days after the sending of the notice, or until the visit of the place by an inspector, whichever first happens, unless compliance with this enactment would tend to increase or continue a danger or would impede the working of the mine.

Section 81 of the Act is a repetition of the section of the Notice of Accidents Act, 1906, which relates to dangerous occurrences.

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The existing order is one made on 22nd December, 1906, under that Act. The following classes of occurrences, whether personal injury or disablement is caused or not, must be reported, namely, (a) all cases of ignition of gas or dust below ground other than ignitions of gas in a safety lamp; (b) all causes of fire below ground; (c) all cases of breakage of ropes, chains, or other gear by which men are lowered or raised; (d) all cases of overwinding cages while men are being lowered or raised; (e) all cases of inrush of water from old workings. Section 82 enables the Home Secretary to direct an inspector to make a special report of any accident which has caused loss of life or personal injury to any person, and to publish any such report.

Section 83 enables the Home Secretary to direct the holding of a formal investigation of any accident and of its causes and circumstances with ancillary provisions on much the same lines as in the Factory Act, 1937.

Section 84 gives the inspector the right to notice of the inquest in the case of a fatal accident. If the inspector is not present at the inquest and any evidence is given of any neglect as having caused or contributed to the accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, then the coroner must send to the inspector of the division notice in writing of such neglect or defect. It also contains a provision giving the right to be present at the inquest and to examine witnesses to any person appointed in writing by any association of workmen to which the deceased at the time of his death belonged, or by any association of employers of which the mine owner is a member, or by any association to which any of the workmen employed in the mine belongs.

SECTION V

THE STATE AND THE HEALTH OF THE WORKER

CHAPTER I

HEALTH REGULATIONS FOR FACTORIES

CHAPTER II

WELFARE AND OTHER SPECIAL PROVISIONS FOR FACTORIES

CHAPTER III

HEALTH REGULATIONS IN WORKPLACES OTHER THAN FACTORIES

CHAPTER IV

OTHER APPLICATIONS OF THE FACTORIES ACT TO MISCELLANEOUS WORKPLACES

SECTION V

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In this section the reader should bear in mind the transfers of functions set forth in the note on p. 25 and on p. 40.

CHAPTER I

HEALTH REGULATIONS FOR FACTORIES

The section which has already dealt with hours of labour and partial and total prohibitions might to a large extent have been included under this heading, and would have been so included but for one thing. The present-day movement for shorter hours is the result of a desire, not merely for a less laborious working day with less risk of physical breakdown and accidents, but also for an ample leisure in which the working classes can enjoy life and attain to a wider existence than is afforded by the erstwhile round of working, feeding, and sleeping. It is a movement with moral as well as physical ends. In fact in some industries it is possible to maintain the same output in a shorter working week, so that the working life remains equally laborious though the work is more concentrated and the leisure hours more extended. When once the subject of the limitation of hours was under consideration it seemed simpler to include all time conditions in the same section, but a very large proportion of the provisions in that section, especially those which apply to workers in dangerous industries, are purely and simply intended to preserve the health of the workers. It would not be difficult to establish a connection between minimum wage legislation and the question of health. We have seen that in such legislation Wages Boards are not tied down by statute to the consideration and granting of a "living wage", but the idea of a wage adequate to maintain the worker in continued health is never far away from the minds of the members of wage-fixing bodies. This connection between health and hours of labour and wages is too obvious to need elaboration, and it is only referred to lest a hasty reader should assume that in this section he is being introduced to all that affects the health of the workers.

The sanitary condition of factories in general is secured by the provisions of the Factories Act, 1937, Part I, Health (General

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Provisions). They cover such matters as cleanliness, overcrowding, temperature, ventilation, lighting, drainage of floors, and sanitary conveniences. There were provisions on most of these matters in the Factory and Workshop Act, 1901, but the Act of 1937 deals with them more thoroughly and more definitely.

(1) *Cleanliness*.—A factory must be kept in a clean state. Three specific directions are given as follows: (a) accumulations of dirt and refuse must be removed daily by a suitable method from the floors and benches of workrooms, and from staircases and passages; (b) the floor of every workroom must be cleaned at least once a week; (c) all inside walls and partitions, and all ceilings or tops of rooms, and all walls, sides, and tops of passages and staircases, if they have a smooth impervious surface must at least once in every fourteen months be washed with hot water and soap or cleaned by such other method as the district inspector approves. If they are kept painted with oil paint or varnished then besides being cleaned as above they must be repainted or revarnished at least once in seven years. In other cases they must be kept whitewashed or colour-washed and the washing must be repeated at least once in every fourteen months. The last provision does not apply to any factory where mechanical power is not used and less than ten persons are employed, unless the district inspector thinks it necessary in some particular case. The Secretary of State has a general power of dispensing with any of these provisions so far as regards any class of factory if it appears to him that by reason of special circumstances they are inappropriate or inadequate.

He has exercised this power so far as regards the provisions labelled (c) above for certain heavy industries, but even in these cases certain parts of the buildings are not exempted. Under S.R. and O., 1938, No. 487, the excepted industries are: (a) blast furnaces, iron mills, copper mills, stone, brick, and tile and cement works, chemical and gas making; and (b) shipbuilding, engineering, etc.

Rooms with less than 500 cubic feet per person, engine houses, fitting shops, messrooms, cloakrooms, lavatories, and sanitary conveniences are the main exceptions which are left under the provisions of the Act.

Overcrowding.—A factory must not while work is being carried on be so overcrowded as to cause risk of injury to the health of the persons employed in it. The standard adopted is the provision of not less than 400 cubic feet of space in each room for each person. As the standard adopted in the Factory and Workshop Act, 1901, was only 250 cubic feet five years were allowed from the passing

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of the 1937 Act before the new standard came into force. If during that period effective and suitable mechanical ventilation had been provided then another five years' respite was given. In any case the requirement will be in operation after 30th July, 1947. The chief inspector can by certificate exempt a workroom in which explosive materials are manufactured or handled from this requirement.

The Secretary of State may make regulations as respects any class of factory increasing the number of cubic feet per person. In making calculations no space more than 14 feet from the floor can be taken into account, and galleries are to be treated as separate rooms. There must be posted in the workroom a notice specifying the number of persons who may be employed in it. The inspector has a dispensing power as to this notice.

Temperature.—Effective provision must be made for securing and maintaining a reasonable temperature in each workroom. The method employed must not admit into the workroom any fumes likely to be injurious or offensive to the persons employed in it. If a substantial proportion of the work is done sitting and does not involve serious physical effort the temperature, after the first hour, must not be less than 60° while work is going on. At least one thermometer must be provided and maintained in a suitable position in the workroom. Regulations may be made by the Secretary of State prescribing standards of reasonable temperature, prohibiting injurious methods of maintaining it, and as to the provision and location of thermometers.

Ventilation.—Effective and suitable provision must be made for securing and maintaining by the circulation of fresh air in each workroom the adequate ventilation of the room and for rendering harmless, so far as practicable, all injurious fumes, dust, and other impurities generated in the course of any process. Regulations may be made by the Secretary of State prescribing a standard of adequate ventilation for factories or any class of factory.

Lighting.—Effective provision must be made for securing and maintaining sufficient and suitable lighting, whether natural or artificial, in every part of the factory in which persons are working or passing. Regulations may be made by the Secretary of State prescribing standards of sufficient and suitable lighting. The Factories (Standards of Lighting) Regulations, 1941 (S.R. and O., 1941, No. 94) contain particulars of what the occupier has to provide.

Lighting by means of any particular illuminant cannot be enforced. Glazed windows and skylights used for the lighting of workrooms must as far as practicable be kept clean inside and

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outside and free from obstruction, but whitewashing and shading may be done for the purpose of mitigating heat or glare.

Drainage of floors.—Where any process is carried on which makes the floor so wet that the wet is capable of being removed by drainage, effective means must be provided and maintained for drawing off the wet.

Sanitary conveniences.—Sufficient and suitable sanitary conveniences for the persons employed in the factory must be provided, maintained, and kept clean, and effective provision must be made for lighting the conveniences. Where persons of both sexes are, or are intended to be employed, such conveniences must afford proper separate accommodation for persons of each sex. This last clause does not apply to factories where the only persons employed are members of the same family dwelling there.

Regulations may be made by the Secretary of State determining what is sufficient and suitable provision.

These regulations are set out in *S.R. and O.*, 1938, No. 611. They follow closely the regulations made under the 1901 Act. The provision has to be proportionate to the number of females and males employed, and must ensure privacy, accessibility, separate approaches for the two sexes, and ventilation.

Duties of district Councils.—A district Council means the Council of a borough or county district.

In general the enforcement of the Factories Act is in the hands of the centrally controlled inspectorate. We now come to important exceptions: (1) The requirements as to sanitary conveniences and any regulations relating to them are to be enforced by the district Council.

(2) As respects *any factory in which mechanical power is not used* the requirements as to cleanliness, overcrowding, temperature, ventilation, and drainage of floors and any order or regulations relating to them are to be enforced by the district Council. The exceptions are (a) any class of factory for which special provision is made against a risk of industrial disease or other risk of injury to health and which the Secretary of State by order excludes; and (b) premises occupied by a railway company, or vested in conservators, etc., for the purposes of dock, harbour, or inland navigation.

In pursuance of this power by *S.R. and O.*, 1938, No. 488, fourteen trades have been removed from the jurisdiction of the district Councils. They include such dangerous industries as brass casting, file cutting by hand, making of asbestos, etc.

In local administration there is always the danger that the local

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employer will have some influence with the local authority which will make them willing to connive at breaches of the law. In the larger towns where the medical officer of health is an officer of high standing and where a pride is taken in civic administration, there is very little danger that the local authority will fail in its duty, but it has been found absolutely necessary for the Home Office to keep some hold on local authorities. There are two main enactments for this purpose. One enables the Secretary of State to supersede the local authority. If he is satisfied that any district Council have failed to enforce any of the provisions of the Factories Act enforceable by them he may by order authorize an inspector to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing those provisions. It may be taken for granted that the mere threat to use these powers would be sufficient to bring a local authority to a sense of its duties.

The other enactment is much more restricted in scope. Where an inspector finds that any act or default in relation to any drain, sanitary convenience, water supply, nuisance, or other matter in a factory which is liable to be dealt with by the district Council as stated above, or under the law relating to public health, he must give notice in writing thereof to the district Council, who must make such inquiry and take such action as seems to the Council proper for the purpose of enforcing the law, and must inform the inspector of the proceedings taken in consequence of the notice. If proceedings are not taken within one month, the inspector may take proceedings and recover from the district Council all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person and have not been incurred in any unsuccessful proceedings.

In order that the district Council may be in a position to do its duty it must know what factories are within its district. The Act therefore imposes on every person who occupies a factory, within one month of his beginning his occupation, the duty of serving on the inspector a written notice containing the name of the occupier or the title of the firm, the postal address of the factory, the nature of the work, whether mechanical power is used, and if so, its nature, the name of the district Council within whose district the factory is situated, and such other particulars as may be prescribed. These details enable the inspector to forward the notice to the district Council of the district in which the factory is situate. The district Council must keep a register of all factories situate within their district as to which they have duties.

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During the year 1933 the inspectors on a total of about 160,000 factories and 87,000 workshops served on the occupier of factories 16,271 contravention notices under the heading "sanitation" and sent 2,869 notices to local authorities. It must not be gathered from these figures that the local authorities only act after receiving notices from the factory inspector. A local authority which has a high standard of sanitation is almost independent of the factory inspector. For instance, Birmingham had 4,948 registered workshops at the close of the year 1918. The inspections made by sanitary inspectors or inspectors of nuisances and other officials totalled 7,353. Want of cleanliness was found in 1,270 instances, want of ventilation in four, overcrowding in two, and want of drainage of floors in four. Only 206 notices were received from the factory inspectors as to workshops requiring attention by the local authority.

Medical supervision.—The Factories Act, 1937, for the first time enables the Secretary of State to set up in certain cases a system of medical supervision. Where it appears to him that in any factory or class of factory (a) cases of illness have occurred which he has reason to believe may be due to the nature of a process or other conditions of work; or (b) there may be risk of injury to the health of persons because of change in some process or the introduction of a new process, or a change in substances used, or the use of some new substance; or (c) young persons are or will be employed in work which may cause risk of injury to their health, then he may make special regulations requiring such reasonable arrangements to be made for the medical supervision of the persons employed. Supervision does not include medical treatment other than first aid treatment and medical treatment of a preventive character. If the Secretary of State is dealing with a particular factory and for a limited period he may legislate by order instead of special regulations.

Miscellaneous Special Provisions

Removal of dust or fumes.—The Act of 1901 dealt specifically with the danger of dust arising from grinding, glazing, or polishing on a wheel, but in the 1937 Act a more generalized section has been inserted. It is to this effect: In every factory in which, in connection with any process carried on, there is given off any dust, or fume, or other impurity of such a character and to such an extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures must be taken to protect the workers against

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inhalation of the dust, etc., and to prevent its accumulation in any workroom. In particular, where it is practicable, exhaust appliances must be provided and maintained as near as possible to the point of origin of the dust, etc., so as to prevent it entering into the air of any workroom. If a stationary internal combustion engine is used special precautions must be taken to prevent exhaust gases and injurious fumes from it from entering the air of the room.

Meals in certain dangerous rooms.—If in any room lead, arsenic, or other poisonous substance is so used as to give rise to any dust or fume, a person must not partake of food or drink in that room, or remain there during the intervals for meals or rest other than breaks in the course of a spell of continuous employment. This was a provision in the Act of 1901, but the Act of 1937 adds a similar rule for a room in which a process prescribed by regulations is carried on so as to give rise to siliceous dust or asbestos dust. Suitable provisions must be made for enabling the workers in any such room to take their meals elsewhere in the factory.

The Secretary of State has power by regulations to extend the scope of these provisions to rooms in which other processes of a like nature are carried on. There was a similar power in the 1901 Act which was exercised in regard to some twenty industries (see second edition, pp. 227-8).

Protection of eyes.—The Secretary of State may specify in regulations any process which involves a special risk of injury to the eyes from particles or fragments thrown off in the course of the process, and if he does this then suitable goggles or effective screens must, as directed in the regulations, be provided to protect the eyes of the workers on it. By *S.R. and O.*, 1938, No. 654, this power has been exercised. It covers various processes such as the dry grinding of metals applied by hand to a wheel driven by mechanical power, to certain cases of turning if done dry, to the welding and cutting of metals by electricity or oxy-acetylene process or the like process, to the use of hand tools in fettling metal castings, in cutting off, in chipping boiler plates and the like operations, and to the breaking of stones and the like operations.

Shuttle threading.—The Secretary of State may make such special regulations as appear to him to be reasonably practicable for extending the provision and use in factories, in which the weaving of cotton or other cloth is carried on, of shuttles not capable of being threaded or readily threaded by suction of the mouth. These regulations may impose duties on workers as well as occupiers.

Both these last provisions are innovations made by the 1937 Act.

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White phosphorus.—The Act of 1937 repeals and re-enacts the White Phosphorus Act, 1908. No person may use white phosphorus in the manufacture of matches.

Humid factories.—For a long time cotton cloth and other humid factories have been specially dealt with in the various factory Acts and several sections of the 1901 Act were devoted to them.

These sections deal with the following matters: temperature and humidity in cotton cloth factories, power to alter table of humidity, employment of thermometers, notices and inspections where humidity is artificially produced, regulations for the protection of health, penalties for non-compliance, application of these provisions to other humid factories. In November, 1907, the Home Secretary appointed a committee to inquire into the question of humidity and ventilation in cotton cloth factories, and in January, 1911, this committee presented its second report. The Factory and Workshop (Cotton Cloth Factories) Act, 1911, was passed to enable the Home Secretary to give effect to the recommendations in this report by regulations which were to take effect as if embodied in Part V of the Act of 1901 and in substitution wholly or partially for the provision of that Act.

Then in 1929 a further Cotton Cloth Factories Act was passed, and new regulations made under it and published in *S.R. and O.*, 1929, No. 300. These regulations are still current. This 1929 Act is repealed by the 1937 Act and the subject is dealt with in this way.

The occupier of every humid factory must on or before the first occasion on which artificial humidity is produced give notice in writing to the district inspector. In every humid factory in which regulations made under the 1937 Act or under repealed enactments with respect to humidity are not for the time being in force then the elaborate provisions set forth in the 1937 Act itself are to have effect. The general lines on which these provisions are drawn has already been indicated. Under the 1937 Act "humid factory" is no longer confined to the cotton cloth industry but means a factory in which atmospheric humidity is artificially produced by steaming or other means in connection with any textile process.

Underground rooms.—The provision as to the use of these rooms is a new enactment in the 1937 Act. It does not affect an underground room used only for storage or some purpose excepted by order. No work must be carried on in any underground room which is certified by the district inspector to be unsuitable for the purpose as regards construction, height, light, or ventilation, or on any hygienic ground, or because the means of escape in case of fire

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are not adequate. In the case of a room in actual use the inspector may hold up his certificate for a reasonable time to enable the occupier to make the room suitable or obtain other premises.

In the case of an underground room which on 1st July, 1938, was not used as a workroom, a prescribed notice must be given to the district inspector before it is used as a workroom, and the room must not be used for a process of a hot, wet, or dirty nature, or which is likely to give off any fume without the consent in writing of the district inspector. Appeals against any decision of an inspector under any of these powers may be made to a Court of Magistrates.

Any room which is so situate that half or more than half of its height, measured from floor to ceiling, is below the surface of the street footway or of the adjoining ground is an underground room.

Basement bakehouses.—The first point to notice is that a bakehouse may escape being an underground room and yet be a basement bakehouse; if the surface of the floor is more than 3 feet below the surface of the street footway or the adjoining ground it is subject to these provisions. A basement bakehouse must not be used as a bakehouse unless it was so used on 30th July, 1937, and a certificate of suitability had been issued by the district Council under the existing law. If such a bakehouse ceases to be used as such for a period exceeding a year it must not be used as a bakehouse again. It is the duty of the district Council in the year beginning 1st July, 1938, and in every fifth succeeding year to carry out an examination of every basement bakehouse in respect of which a certificate of suitability has been issued. If the examination reveals unsuitability for use as regards construction, height, light, ventilation, or any hygienic respect the district Council may give a month's notice in writing that the certificate is to cease to have effect. The occupier has a right of appeal to a Court of Magistrates. It is for the district Council to see that their decisions are enforced and if they are in default the provisions set out on p. 223 as to district Councils in default will apply.

Laundries.—In the case of laundries the Factory and Workshop Act, 1907, contained special provisions which have been substantially re-enacted in the 1937 Act:—

(a) Effective steps must be taken by means of a fan or otherwise to regulate the temperature in every ironing room and to carry away the steam in every washhouse.

(b) All stoves for heating irons must be so separated from any ironing room or ironing table as to protect the workers from the heat thereof.

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(c) No gas-iron emitting any noxious fumes may be used.

Excessive Weights.—This is a new provision in the 1937 Act. A young person must not be employed to lift, carry, or move any load so heavy as to be likely to cause injury to him. The Secretary of State may make special regulations prescribing the maximum weights which may be lifted, carried, or moved by persons employed in factories, and such regulations may prescribe different weights in different circumstances and for different classes of persons.

Female Young Persons.—A female young person must not be employed in any part of a factory where the following processes are carried on : (a) the process of melting or of blowing glass other than lamp blown glass ; or (b) the process of annealing glass other than plate or sheet glass ; or (c) the evaporating of brine in open pans, or the storing of salt.

The Secretary of State may by regulations extend these provisions to other processes at which it appears to him to be undesirable that such young persons should work and if circumstances change he may relax these provisions in whole or in part as regards a particular process.

Lead Manufacture.—In 1920 an Act was passed entitled the Women and Young Persons Employment in Lead Processes Act, 1920. This has been repealed by the 1937 Act but re-enacted in the same words. The first section of the 1920 Act was to this effect : A woman or young person must not be employed in any of the following operations :—

(a) Work at a furnace where the reduction or treatment of zinc or lead ores is carried on ;

(b) The manipulation, treatment, or reduction of ores containing lead, the desilvering of lead, and the melting of scrap lead or zinc ;

(c) The manufacture of solder or alloys containing more than 10 per cent of lead ;

(d) The manufacture of any oxide, carbonate, sulphate, chromate, acetate, nitrate, or silicate of lead ;

(e) Mixing or pasting in connection with the manufacture or repair of electric accumulators ;

(f) The cleaning of workrooms where any of the processes aforesaid are carried on.

The Use of Lead Compounds.—Another section of the same 1920 Act laid down conditions which must be fulfilled if a woman or young person is employed in any process involving the use of lead compounds if the process is such that dust or fume from a lead compound is produced, or the persons employed are liable to be

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splashed with any lead compound. These provisions can be summarized as follows :—

(a) The dust or fume must be drawn away from the persons employed by means of an efficient exhaust draught ;

(b) The persons employed must undergo medical examination at prescribed intervals ;

(c) No food, drink, or tobacco may be brought into or consumed in any room in which the process is carried on, and no person may remain in any such room during meal times ;

(d) Suitable and clean protective clothing must be provided by the occupier and worn by the workers ;

(e) Such suitable cloakroom, messroom, and working accommodation as may be prescribed must be provided for the workers ;

(f) The workrooms and all tools and apparatus must be kept clean.

Dangerous Industries.—In the section on safety the provisions of section 60 of the Factories Act, 1937, were set out, but they are equally applicable to health. Under similar powers contained in section 79 of the Act of 1901 twenty-six industries certified as dangerous to health were subject to special regulations. A full list was given at p. 229 of the second edition.

Special Devices.—The special devices for protecting the health of the workers are really not very numerous, and in the second edition (pp. 230–248) an attempt was made to give an idea of the very voluminous regulations by giving a short description of these devices and stating to which of the industries they were applied.

These special devices have to a considerable extent been made use of in the drafting of the general provisions already set out so far as they represent advances on the legislation contained in the Act of 1901, and will be dealt with here much more briefly.

The device of extra space for the workers and keeping a good distance between workers is suitable for industries involving a poisonous or otherwise harmful dust or noxious fumes.

Special floors are a device for ensuring two different ends. In dusty operations they enable the dust to be easily removed, and in wet operations they enable the floors to be effectively drained.

Special ventilation is a general device for minimizing the dangers of injurious dust or fumes.

The washing of hands, or even more elaborate cleansing extending to baths in some cases, is a recognized precaution in many unhealthy industries. On the one side there is an obligation on the employer to provide adequate facilities for washing, and in certain cases to allow part of the working hours to be used for washing, and on the

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other side there is an obligation on the worker to wash themselves to the prescribed extent. This device has been utilized in the drafting of welfare orders.

Extra cleaning of the workplaces, actual disinfection of the material used, and the damping of dust may be grouped together as devices, the purpose of which is obvious.

The provision of suitable clothing is sometimes made obligatory as a safeguard against poisonous dust adhering to the worker's ordinary clothes. This also covers the provision of respirators.

The periodical examination of the workers by a duly qualified medical practitioner is another very general device, by which the onset of lead or other poisoning may be detected at an early stage.

The absolute separation, not merely of the meal from the work, but of food, etc., from the work, is another device where poisonous materials are in use.

In certain industries *the maintenance of a particular temperature* is an important matter. This device is useful when special ventilation may make workrooms too cold, or artificial humidity may make them too damp.

The provisions of (a) *cloakrooms* for outer clothing; (b) *store rooms* for protective clothing used at work; and (c) *messrooms*, is made obligatory for certain workers. This device has been utilized in the drafting of welfare orders.

Precautions against infection through small cuts and scratches and the like. This is yet another device used in the drafting of welfare orders, as some of the provisions were much earlier in date than welfare orders.

If the reader is interested in pursuing the subject further he is advised to study the Regulations for the Pottery Industry which form a code of rules of greater elaboration than is possessed by any other industry except possibly the coal mining industry. It contains at least one feature of supreme interest—namely a provision for the self-inspection of the factory or workshop. A summary of the Regulations will be found in the second edition of this book, pp. 243-8.

CHAPTER II

WELFARE AND OTHER SPECIAL PROVISIONS FOR FACTORIES

Until about the middle of the 1914-18 war what is now known as welfare work was confined to voluntary efforts on the part of a few large firms. During that war the Government assumed special control over and special responsibility for the manufacture of munitions. On the one hand they relaxed the statutory hours and safeguards contained in the Factory and Workshop Act, 1901, and on the other they took steps to introduce certain amenities. The Police Factories, etc. (Miscellaneous Provisions), Act, 1916, empowered the Secretary of State to make orders known as Welfare Orders on various matters affecting the health, safety, or general well-being of factory workers. The definite list of matters for which provisions could be ordained was as follows :—

Arrangements for preparing and heating and taking meals ;

The supply of drinking water ;

The supply of protective clothing ;

Ambulance and first aid arrangements ;

The supply and use of seats in workrooms ;

Facilities for washing ;

Accommodation for clothing ;

Arrangements for supervision of workers ;

and there was also a general power of adding other matters by issuing a Special Order under section 126 of the Factory and Workshop Act, 1901.

In virtue of this power, the provision of rest rooms was added to the list.

In the second edition of this book these matters were dealt with one by one and lists made of the classes of factories in respect of which provisions had been enacted. Only one general order had been made and that was as regards the supply of drinking water in all work places in which twenty-five or more persons were employed. For the most part the orders affected from five to twelve classes of factories. The Factories Act, 1937, is much bolder in its treatment of the subject, as the following summary will show.

Five matters are made matters of general enactment :—

(1) *Supply of Drinking Water*.—There must be provided and maintained at suitable points conveniently accessible an adequate

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supply of wholesome drinking water. Where drinking water is not laid on there are rules for keeping it fresh. The district inspector can direct the supply to be clearly marked "Drinking Water".

(2) *Washing Facilities*.—There must be provided and maintained adequate and suitable facilities for washing, including soap and clean towels or other suitable means of cleaning or drying. Facilities must be conveniently accessible and be kept in a clean and orderly condition.

The Secretary of State may by regulations prescribe standards of adequate and suitable washing facilities, either generally or for a class of factories, or in respect of a process. He may also provide by regulations for the exemption of factories where for special reasons the application of the requirements would in his opinion be unreasonable.

The Washing Facilities (Dermatitis Order), 1938 (*S.R. and O.*, 1938, No. 581) illustrates the use of the first part of this power in respect of a particular disease. The processes covered are french polishing, metal plating, cleaning of printing presses, and the making and packing of sugar confectionery.

(3) *Accommodation for Clothing not worn during Working Hours*.—This must be provided and maintained and reasonably practicable or prescribed arrangements must be made for drying such clothing. For these matters the Secretary of State may by regulations prescribe standards. He is also given a power of exempting factories as indicated in (2).

(4) *Facilities for Sitting*.—There must be provided and maintained for the use of all female workers whose work is done standing suitable facilities for sitting sufficient to enable them to take advantage of any opportunities for resting which may occur.

(5) *First Aid*.—There must be provided and maintained so as to be readily accessible a first aid box or cupboard of the prescribed standard, and where more than 150 persons are employed an additional box or cupboard for every additional 150 persons. The First Aid in Factories Order (*S.R. and O.*, 1938, No. 486) gives detailed requirements based on a threefold classification: (a) where ten workers and under are employed; (b) where more than ten workers but not more than fifty workers are employed; and (c) where more than fifty workers are employed. If no mechanical power is used then the requirements for class (b) are the same as for class (a). Nothing except appliances or requisites for first aid are to be kept in the box or cupboard. Each first aid box or cupboard must be in the charge of a responsible person, or where more than fifty persons are employed such person must be trained

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in first aid treatment and be readily available during working hours and be named in a notice in every workroom.

The chief inspector has a power of exemption by certificate where an ambulance room is provided and arrangements are made to ensure immediate treatment there of all injuries.

After these general rules there follows a general power given to the Secretary of State where owing to the conditions of employment or the nature of the processes carried on further provision requires to be made, to make special regulations (a) requiring steps to be taken either in addition to or substitution for the provisions already set out ; and (b) for dealing with the other matters in the list already given. These special regulations are referred to as "welfare regulations". Some further points must be noted. Such regulations do not apply to factories in which the only persons employed are members of the same family dwelling there. The regulations may impose duties on owners as well as occupiers of factories, and so far as relates to user of facilities on employed persons. For example, persons on certain processes may be compelled to wash or even to take baths.

There are interesting provisions (a) for making particular requirements contingent upon application by some of the persons employed ; and (b) for associating employed persons in the management where a portion of the cost is contributed by the persons employed. But no such contribution is allowed except for additional or special benefits, not reasonably chargeable to the employer alone, and with the consent of at least two-thirds of the workers affected.

A very recent set of special regulations is interesting because it is a combination of provisions for a dangerous industry and for general welfare. It is the Patent Fuel Manufacture (Health and Welfare) Special Regulations (S.R. and O., 1946, No. 258). It contains provisions concerning dust, ventilation, washing facilities, clothing accommodation, medical supervision and examination, skin and eye protection, and messrooms.

CHAPTER III

HEALTH REGULATIONS IN WORKPLACES OTHER THAN FACTORIES

So far we have been dealing with provisions that ensure a reasonable care for the health of persons employed in factories. There are three other classes of workers for whose health the law has made some provision, namely, (1) persons employed in retail shops ; (2) outworkers ; (3) miners. With regard to retail shops the legislation with one exception is very recent and is contained in section 10 of the Shops Act, 1934.

That Act provides for six matters : (1) A suitable and sufficient means of ventilation must be provided and maintained. (2) Suitable and sufficient means must be provided to maintain a reasonable temperature, and such reasonable temperature must actually be maintained. (3) Suitable and sufficient means of lighting must be provided, and the shop must be kept suitably and sufficiently lighted. These three provisions apply in every part of a shop in which persons are employed about the business of the shop. In every shop not specially exempted there must be provided for the use of persons employed in or about the shop : (4) Suitable and sufficient sanitary conveniences ; and (5) suitable and sufficient washing facilities. Exemption may only be obtained by a certificate from the administering authority which may only be given if *both* of the following conditions are fulfilled : (a) the authority is satisfied that exemption is reasonable because of the restricted accommodation, or other special circumstances affecting the shop ; and (b) that suitable and sufficient sanitary conveniences or washing facilities, as the case may be, are otherwise conveniently available. Finally, (6) where persons employed about the business of a shop take any meals in the shop, suitable and sufficient facilities for the taking of those meals must be provided and maintained. Shop includes any place where retail trading is carried on.

The earlier legislation was merely concerned with seats for female workers and in practice is probably of little value. Under the Shops Act, 1912, in all rooms of a shop where female assistants are employed in the serving of customers, the occupier of the shop must provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats must be in the

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proportion of not less than one seat to every three female shop assistants employed in each room.

As regards outworkers the foundation of these safeguards is the list of outworkers which must be kept by the occupier of every factory and workshop and every contractor employed by any such occupier if they are engaged in certain classes of work. The general provisions as to these lists are contained in Part VIII of the Factories Act, 1937, but the actual outworkers' lists, under statutory rules and orders made in 1911, 1929, and 1938, concern the following classes of work :—

The making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel.

The making, ornamenting, mending, and finishing of lace and of lace curtains and nets.

Cabinet and furniture making and upholstery work.

The making of electro-plate.

The making of files.

Fur-pulling.

The making of iron and steel cables and chains.

The making of iron and steel anchors and grapnels.

The making of cart gear, including swivels, rings, loops, gear buckles, mullin bits, hooks, and attachments of all kinds.

The making of locks, latches, and keys.

The making or repairing of umbrellas, sunshades, parasols, or parts thereof.

The making of artificial flowers.

The making of nets other than wire nets.

The making of tents.

The making or repairing of sacks.

The covering of racquet or tennis balls.

The making of paper bags.

The making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip, or similar material.

The making of brushes.

Pea-picking.

Feather-sorting.

The carding, boxing, or packeting of buttons, hooks and eyes, pins, and hair-pins.

The making of stuffed toys.

The making of baskets.

The making of chocolates or sweetmeats.

The making or filling of cosques, Christmas crackers, Christmas stockings, or similar articles or parts thereof.

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The weaving of any textile fabric.

The manufacture of lampshades other than those made wholly of metal, glass, or stone.

And any processes incidental to the above.

The obligation is (a) to keep in the prescribed form and manner lists showing the names and addresses of all persons directly employed by him either as workmen or as contractors in the business of the factory outside the factory and the places where they are employed; (b) to send to an inspector such copies of or extracts from those lists as the inspector may from time to time require; and (c) to send during February and August in each year copies of those lists to the district Council.

The Council must examine each list, and if it appears that any place where a workman is employed is outside the district of the local authority receiving the list, then the Council must pass on the name of the workman and his place of employment to the Council of the district in which the place of employment lies. This seems a little complicated, but it comes to this—the employer who gives out work sends a list of the outworkers to his own district Council which then sorts out the places of employment of the individual outworkers, so that each local authority has a complete list of the places of employment of all outworkers in its district, irrespective of where the work was originally given out.

In Birmingham in the year 1918 the Public Health Department received 552 lists, distributed amongst eight industries only—namely: (1) 385 makers of wearing apparel, who gave out work to 993 contractors and 1,251 individual workpeople; (2) seventy-four employers in the button, hook and eye, and pin trades, who gave out work to ten contractors and 1,129 individual workpeople; (3) thirty-nine employers in the paper-box and paper-bag trades, who gave out work to one contractor and 138 individual workpeople; (4) thirty employers in the electro-plate trading, giving out work to 184 contractors and only thirty-nine individual workpeople; (5) thirteen employers, in brush-making, who gave out work to 114 individual workpeople; (6) eight makers of brass articles, who gave out work to twenty-six contractors and forty-two individual workpeople; (7) two file makers, who apparently sent blank lists for the year; and (8) one maker of stuffed toys who gave out work to four workpeople.

The district Council through their health department should be aware of the condition of the premises on which outwork is being done, and if it gives notice in writing to the occupier of the factory or workshop or to any contractor employed by any such occupier

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that the premises are injurious or dangerous to the health of the persons employed thereon, then if the occupier or contractor after the expiration of ten days from the receipt of the notice gives out work to be done on those premises and the case is taken into Court and the premises are proved to be injurious or dangerous, he is liable to a fine. The classes of work to which this enactment applies are the same as for the outworkers' lists except that the industries making the various metal articles and cabinet and furniture making are omitted.¹

In London and Scotland further provisions are in force, as follows. If the occupier of a factory or workshop or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired in any dwelling-house or building occupied with it, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he is also liable to a fine. As scarlet fever and small-pox are notifiable diseases, the medical officer, on getting notification of a case, can search the outworkers' lists, and if he finds that the case is at a dwelling-house where an outworker is employed, he can at once notify the employer of the existence of the illness. Again, if any inmate of a house is suffering from any notifiable infectious disease, the local authority (or in an urgent case two or more members of that authority acting on the advice of the medical officer of health) may make an order forbidding any work of a certain class to be given out to any person living or working in that house, or a specified part of it, and such order may be served on the occupier or contractor. The order may be made either for a specified time, or subject to disinfection of the house or to the adoption of other reasonable precautions.

The provisions dealing with health in mines are not elaborate. The reduction of working hours to seven and a half per day has already been noted. The Coal Mines Act, 1911, provides for the making of general regulations as to sanitary conveniences both above and below ground. Sections 106-112 of the General Regulations now in force deal with this matter.

The question of baths for miners is dealt with in a somewhat novel manner. Accommodation for taking baths and facilities for drying clothes must be provided at the mine if three conditions are satisfied, one of which is that the workmen have to pay half the cost of maintenance. The first condition is that a vote must be

¹ The excepted cases are denoted by italics in the list given on p. 235.

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taken by ballot of all the workmen employed underground and of all workmen engaged on the surface in handling tubs, screening, sorting, or washing coal, or loading coal into wagons, and on this vote there must be a two-thirds majority in favour of the provision of this accommodation and these facilities. The second condition is that the workmen shall pay half the cost of maintenance, and the third condition is that the estimated cost of maintenance must not exceed threepence per week for each workman liable to contribute. Under this scheme the capital expenditure falls on the mine owner but the cost of maintenance includes interest on capital expenditure not exceeding 5 per cent per annum. The workmen's contributions may be recovered by the mine owner by deduction from their wages. The management of the accommodation and facilities provided is to be under the control of a committee to be established in accordance with the regulations of the mine and consisting as to one half of members appointed by the owner of the mine, and as to the other half of members appointed by the workmen liable to contribute to the expense of maintenance. The scheme does not apply to mines where the voters and contributors number less than one hundred.

These provisions have been thrust into the background by the creation in 1920 of a Miners' Welfare Fund raised by a levy of one penny per ton. The greater part of this fund has been used for institutes and halls, playgrounds, swimming-baths, and other recreational purposes, for convalescent homes, hospitals, and other health purposes, and for scholarships and educational purposes, but about 5 per cent has been spent on Pit Welfare, mainly in the form of pithead baths and baths canteens. At the end of 1933 baths had been provided or were in course of erection at 207 mines employing 248,000 wage earners. The Mining Industry (Welfare Fund) Act, 1934, reduces the levy to one half-penny per ton, but continues the levy for a further sixteen years, making thirty-one years in all. The Mining Industry Act, 1926, had imposed a levy on royalties, the proceeds of which were earmarked for baths and accommodation for drying clothes. By the Act of 1934 the royalties levy may be devoted to such accommodation and facilities for workers as can be conveniently and properly combined with those for taking baths and drying clothes. The royalties levy is to be supplemented by grants from the output levy so as to raise an annual sum of £375,000 and it is computed that this sum will be sufficient to provide all mines, except very small ones or those practically worked out, with the amenities mentioned. The beneficiaries under the Act of 1934 are "workers in or about coal

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mines ", but this class is defined so as to include persons who have ceased to be employed in or about coal mines by reason of age or disability, or who having ceased to be so employed for any reason, have not subsequently changed their occupation, and the dependents of such workers and persons.

The Mining Industry (Welfare Fund) Act, 1939, has amended the Act of 1934 by increasing the tonnage levy to one penny per ton, the proceeds of this additional half-penny to be appropriated for the same purposes as the proceeds of the royalties levy under the Act of 1926. It also sets up a corporate body, the Miners' Welfare Commission, to take over the powers and duties of the Welfare Committee which the Mining Industry Act, 1920, had brought into being.

There is one express enactment guarding against a form of dust which is liable to give rise to fibroid phthisis. Under general regulations made in 1920 applying to mines in which ganister is worked elaborate precautions have to be taken for watering dust and preventing the escape of dust into the air. A constant and adequate ventilating current must be maintained.

There is also a general provision for the notification of industrial diseases. Written notice of every case of any disease occurring in a mine and occasioned by the nature of the employment (being a disease specified in an order made by the Home Secretary for the purpose) must forthwith be sent to the inspector of the division and the provisions of the Act with respect to the notification of accidents is to apply to any such case.

CHAPTER IV

OTHER APPLICATIONS OF THE FACTORIES ACT TO MISCELLANEOUS WORKPLACES

So far the reader has been left to interpret the word "factory" from his general knowledge of industry and he probably has not encountered any serious difficulty, though he may not heretofore have regarded such workplaces as laundries as coming within that term. A very long section (section 157) is devoted to interpretation of the word "factory" and something must be written about it to make earlier chapters more precise and also as an introduction to Part VII which deals with special applications and extensions.

The normal meaning of the word "factory" is any premises in which persons are employed in manual labour in any process for or incidental to (a) the making of any article, or any part of it ; or (b) the altering, repairing, ornamenting, finishing, cleaning, or washing, or the breaking up or demolition of any article ; or (c) the adapting for sale of any article ; being premises in which the work is carried on by way of trade or for purposes of gain, and to which the employer of the persons employed therein has the right of access or control.

This general definition is followed by the specific inclusion of thirteen kinds of premises in which persons are employed in manual labour. For the most part it will be sufficient to summarize these. They are as follows : (1) any yard or dry dock in which ships or vessels are constructed, reconstructed, repaired, refitted, finished, or broken up ; (2) sorting rooms ; (3) fitting or packing rooms ; (4) rooms for hooking, plaiting, lapping, making up or packing of yarn or cloth ; (5) laundries, ancillary to another business or part of a public institution ; (6) repair shops for transport vehicles ; (7) printing and bookbinding premises ; (8) rooms for the production, etc., of dresses, scenery, or properties for the stage or the cinema ; (9) premises for making or mending nets incidentally to the fishing industry ; (10) tool and repair shops using mechanical power and incidental to a business ; (11) premises in which films for cinemas are produced for gain ; (12) premises in which articles are made or prepared incidentally to building operations, or works of engineering construction ; and (13) any premises for the storage of gas in a gas holder of not less than 5,000 cubic feet.

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Premises belonging to the Crown or any public authority are not to be excluded from the operation of the Act, if the only reason for doing so is that the work carried on in them is not carried on by way of trade or for purposes of gain.

Tenement Factories.—The first of the special applications of the Act is to tenement factories. A tenement factory means one in which mechanical power from any prime mover within the premises is distributed for use in manufacturing processes to different parts of the same premises occupied by different persons so as to constitute those parts as separate factories. In a tenement factory a great part of the duties under the Act are shifted from the occupier and put on the owner. The dividing line is approximately this. Duties relating to the building and its contents are borne by the owner. Duties relating to the personnel, such as keeping within the prescribed hours of work, obtaining certificates of fitness, are borne by the occupier.

Electrical Stations.—The Act applies to any premises in which persons are regularly employed in the processes of generating transforming, or converting, or of regulating electrical energy for supply by way of trade, or for supply to any transport undertaking, or other industrial or commercial undertaking or of any public building, or public institution or for supply to streets or other public places.

Institutions.—Where in any premises forming part of an institution carried on for charitable or reformatory purposes (not being subject to inspection by or under the authority of a Government Department) any manual labour is exercised in the making, etc., of articles not intended for the use of the institution, but the premises do not constitute a factory, then the Act is to apply, unless a special scheme to take its place is approved by the Secretary of State. The conditions for a special scheme are as follows :—

The managers must satisfy the Secretary of State that the only persons working therein are inmates supported by the institution, or the supervisors. The work must be carried on in good faith for the support, education, training, or reformation of persons engaged in it. The Secretary of State must be satisfied that as regards regulation of the hours of employment, intervals for meals, and holidays of the inmates, the provisions of the scheme are not less favourable than the corresponding provisions of the Act.

Building Operations and Works of Engineering Construction.—Building operations and works of engineering construction undertaken by way of trade or business, or for the purpose of any industrial or commercial undertaking, and any line or siding used therewith

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come within the provisions of the Act so far as they relate to (a) sanitary conveniences ; (b) steam boilers and air receivers ; (c) welfare regulations ; (d) the making of special regulations for safety and health ; (e) notification of accidents. They also come within the sections of the Act dealing with administration and interpretation.

These two kinds of premises are dealt with in separate sections so as to make minor modifications possible. Under powers given to the Secretary of State he made regulations, namely the Factory Act (Docks, Buildings, Engineering Construction, etc.) Modifications Regulations, 1938 (S.R. and O., 1938, No. 610), which modify the provisions as to general registers, cleaning of machinery by women and young persons, and air receivers.

Lead Processes carried on in places other than Factories.—Under section 109 (a) the provisions relating to the employment of women and young persons in certain processes connected with lead manufacture and in processes involving the use of lead compounds ; (b) the provisions requiring notification to be sent to the chief inspector, or to the district inspector, of lead poisoning contracted or occurring in factories ; (c) any provision relating to powers and duties of inspectors and to offences, penalties, and legal proceedings, are to apply to employment in any such processes in any place other than a factory as if the place were a factory and the employer were the occupier, and as if references to young persons included references to all persons who had not attained the age of eighteen.

Docks, Wharf, or Quay.—Premises of this nature, with any warehouse or line or siding used therewith, and every other warehouse using mechanical power, come within the provisions of the Act so far as they relate to (a) steam boilers ; (b) the power of the Secretary of State to require special safety arrangements and the like ; (c) welfare regulations ; (d) the making of special regulations as to safety and health ; (e) notification of accidents, etc. They also come within the sections of the Act dealing with administration and interpretation.

Ships.—Work carried out in a harbour or wet dock in constructing, reconstructing, repairing, refitting, painting, finishing, or breaking up a ship, or in sealing, scurfig, or cleaning boilers in a ship, or in cleaning oil-fuel tanks or bilges in a ship come within the provisions of the Act so far as they relate to (a) welfare regulations ; (b) the making of special regulations for safety and health ; (c) notification of accidents ; (d) hours of employment (but not as to Sunday work and annual holidays). It also comes within the sections of the Act dealing with administration and interpretation.

SECTION VI.

THE NATIONAL INSURANCE ACT, 1946

SECTION VI

THE NATIONAL INSURANCE ACT, 1946

The medical officer of health of one of our largest provincial cities was asked a generation ago what measure in his opinion had done most for the working classes. He replied without any hesitation that it was National Insurance. Probably as a medical officer he had in mind the improvement in general health since 1911, but a factor quite as important as the care of the body in times of sickness is the general sense of security engendered by the monetary benefits receivable during periods of illness and unemployment.

The National Insurance Act, 1911, deserved the commendation given to it, but as time went on and the insecurity of the pre-1911 days was forgotten by the older people and unknown to the younger ones attention was more and more given to the omissions in the general scheme, and this phase culminated in the publication of the well known Beveridge plan. Four Acts of Parliament have recently received the Royal Assent, and as a result a very much greater sense of security has been attained. Those Acts are (1) the Family Allowances Act, 1945, which came into actual operation in August, 1946; (2) the National Insurance (Industrial Injuries) Act, 1946, to which the Royal Assent was given on 26th July, 1946; (3) the National Insurance Act, 1946, to which the Royal Assent was given on 1st August, 1946, and (4) the National Health Service Act, 1946, to which the Royal Assent was given on 6th November, 1946. So far no appointed days have been fixed for bringing the three last mentioned Acts into actual operation.

The scope of these Acts taken as a group is National in a very real sense and a good many of their provisions are outside the scope of a book like this which deals with what the State has done for "workers", in the sense of persons who work under a contract of service. But the Acts are interlocked, and the reader must at least know the general lines on which they are drafted.

The Family Allowances Act, 1945, provides a weekly allowance for every child, other than the first child, irrespective of the employment, or non-employment, of its parents. Childhood lasts so long as the child is receiving full-time instruction in a school, but not beyond the first day of August after his attaining the age of sixteen. Up to this limit of age an apprentice ranks as a child and is defined

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as a person undergoing full-time training for any trade, profession, office, employment, or vocation, and not in receipt of earnings which provide him wholly or substantially with a livelihood. In certain cases the two National Insurance Acts provide additional benefits for a man with a child or children but such benefits normally are only concerned with the first or only child. Again, disputes as to whether a particular child is to be regarded as the child of a beneficiary under those two Acts has to be determined in the same way as similar disputes under the Family Allowances Act, that is to say in the following way : All claims for or in respect of allowances are to be decided by the Minister, but a person dissatisfied with his decisions may appeal to a referee or referees chosen from a panel of referees, and the decision given at the hearing of the appeal is final.

The provisions of the National Insurance (Industrial Injuries) Act, 1946, are clearly within the scope of this book and have already been dealt with (pp. 190-209).

The National Insurance Act, 1946, begins with the inclusion among insured persons of " every person who on or after the appointed day, being over school leaving age and under pensionable age, is in Great Britain ". But it then proceeds to divide insured persons into three classes. The first of these consists of employed persons, who are defined as persons gainfully occupied in employment in Great Britain, under a contract of service. Obviously as far as the Act is dealing with this class its provisions are within the scope of this book.

In a sense the second class, which consists of self-employed persons, being those gainfully occupied in employment who are not employed persons, may be considered as workers, but it is very exceptional for industrial legislation to concern itself about them.¹

The third class of non-employed persons, that is to say persons who are not employed or self-employed, clearly does not come within the purview of this book.

The provisions of the National Health Services Act, 1946, do not depend on employment, but the Act is linked with the National Insurance Act, 1946, by the fact that part of the contributions payable by insured contributors is allocated to the Health Services Fund, and that the health services to which those contributors are entitled take the place of the " medical benefit " which was formerly given under the National Health Insurance Acts. These health services are summarized on p. 268.

Under the National Insurance Act, 1946, seven kinds of benefit

¹ For an example under the Truck Acts, see p. 94.

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are provided for, namely : (a) unemployment benefit ; (b) sickness benefit ; (c) maternity benefit ; (d) widows' benefit ; (e) guardian's allowance ; (f) retirement pension ; (g) death grant. The only absolutely new benefit is the death grant. To understand with any exactitude the advance made by the four statutes which have carried out the Beveridge scheme we must first trace the development of national insurance from 1911 onwards. The National Insurance Act, 1911, dealt with health insurance in Part I, and with unemployment insurance in Part II, but the scope of the two parts differed profoundly.

The problem of mutual insurance against sickness had been dealt with by Friendly Societies long before 1911, and though only a small proportion of the working classes had become members of such societies yet their experience was on a scale sufficient to furnish accurate actuarial tables of the risk of sickness at various ages. On the other hand the risk of unemployment was one of which there was little statistical knowledge. Accordingly Part I of the Act of 1911 dealt with sickness on the boldest and most comprehensive lines, while Part II was restricted to a limited experiment with certain fluctuating trades. Before long these two cognate subjects parted company, and a series of Acts dealing with Health Insurance were consolidated by the National Health Insurance Act, 1924, and another series of Acts dealing with unemployment insurance were consolidated by the Unemployment Insurance Act, 1935. In 1925 a scheme for contributory pensions for insured persons was tacked on to the existing health insurance scheme by the passing of the Widows, Orphans, and Old Age Contributory Pensions Act, 1925. This latter scheme was also related to earlier legislation for non-contributory pensions given to persons over the age of seventy by the Old Age Pensions Acts, 1908 to 1924.

The boldness of the health insurance scheme of 1911 was particularly shown in including all persons from the age of sixteen upwards. Experience had shown a steadily increasing risk of sickness beginning at an average of six and a half days per annum at the age of sixteen and increasing to thirteen weeks at the age of sixty-nine. The practice of Friendly Societies was to impose a contribution which varied according to the age of the member at entry, and to refuse admission to persons who had reached an age which may be roughly defined as middle age. The financial soundness of the national scheme was, however, carefully guarded, but at the expense of the accuracy of the famous boast of Mr. Lloyd George that the working classes were being given 9d. for 4d.

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It was only on the average that the contributor was given 9*d.* for 4*d.* For many years the lad who entered at sixteen would only get 7*d.* for 4*d.*, while the entrant at forty-five would get 1*s.* 6*d.* for 4*d.* It was reckoned that about eighteen years would elapse before the younger men would be able to get 9*d.* in benefits in return for their contributions of 4*d.* As a matter of fact the financial basis was so sound that additional benefits came to play an important part.

The comprehensive character of the scheme was shown by the general inclusion of employed persons, whether manual workers or not, but with an income limit in the case of the non-manual workers. The inclusion of domestic servants raised considerable opposition at the time, but this died down very soon after the Act was in actual operation. Minor alterations between 1911 and 1924 may be disregarded and we may pass to the provisions of the National Health Insurance Act, 1924.

The persons insured by the Act were defined on the same lines as in the Workmen's Compensation Acts, that is to say, some wide inclusive definitions were given, and then exceptions were laid down. The employment included as its main class was employment under any contract of service or apprenticeship. Of the employments excluded only three need be noticed, namely :—

(a) Employment otherwise than by way of manual labour and at a rate of remuneration exceeding £250 a year.

(b) Employment of a casual nature otherwise than for the purposes of the employer's trade or business.

(c) Employment in the service of the husband or wife of the employed person.

There were also special provisions for teachers who came within superannuation acts, and for the staffs of public authorities, railway companies, and the like.

One of the problems to be solved was to find a suitable way of dealing with persons who were in employment as defined in the scheme, and yet for personal reasons were not really in need of its benefits.

Four classes of employed persons were given *the option* of applying for an individual exemption certificate which freed him from any personal contribution. In return for the employer's contribution strictly limited benefits were given to holders of exemption certificates.

In 1925 a pension scheme was added to the health insurance scheme by the passing of the Widows, Orphans, and Old Age

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Contributory Pensions Act, 1925. It gave pension benefits to insured persons under the Act of 1924.

The whole scheme was financed by contributions from the employer, the worker, and the State. The contribution began at the age of sixteen, at a modified rate, and ceased at the age of sixty-five. The employer in the first instance paid the whole joint contribution by the purchase of a weekly stamp, to be affixed by him to the contributor's card. He was entitled to deduct the workman's share from the workman's wages.

The benefits of the scheme were normally enjoyed through membership of an Approved Society and full benefits were only payable to members of such societies. This involved special and complicated provisions for "deposit contributors".

Something must be said about the benefits enjoyed under the National Health Insurance Act, 1924. There was "medical benefit" administered by local Insurance Committees, and consisted of free medical treatment and attendance, including the provision of medicine and prescribed medical and surgical appliances. This was limited to the insured person and did not extend to members of his family. There was "sickness benefit" which consisted of weekly payments whilst the insured was incapable of work through some specific disease or through bodily or mental disablement. This benefit commenced on the fourth day of incapacity and the maximum period of duration was twenty-six weeks. Then followed "disablement benefit", which was extended sickness benefit but at rates approximately half the sickness rate. It was payable as long as the incapacity lasted. There was also "maternity benefit" consisting of a lump sum payable to the wife of an insured person or to an insured woman. Finally there came "additional benefits". The accumulation of surplus funds by Approved Societies had been widespread, and in the third schedule to the Act of 1924 there was a list of additional benefits which an Approved Society might give to its members. The most important were: dental treatment, convalescent treatment, reduction of the waiting period, increase of maternity benefit, and medical benefit for the dependants of the insured.

Approved Societies were bodies very similar to the Friendly Societies which have for a long time been one of the best features of working class voluntary organization. Before a Society could be approved it must be constituted (a) so that it was not carried on for profit; and (b) so that its affairs were subject to the absolute control of its members.

We now come to the pension side of the scheme. **Benefits taking**

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the form of pensions were given to the widows and orphans of insured persons, and to insured persons themselves at the age of sixty-five

The "widow's pension" was at the rate of 10s a week with an additional allowance in respect of children at the rate of 5s per week for the eldest and 3s per week for each of the other children. Childhood lasted till the age of fourteen, or such higher age not exceeding sixteen, up to which the child remained under full-time instruction in a day school.

The "orphan's pension" was at the rate of 7s 6d for each orphan child of an insured man or an insured widow.

The "old age pension" was given to an insured man or an insured woman who has attained the age of sixty-five, but had not attained the age of seventy, and to the wife of an insured man who was a pensioner, such wife being herself of pensionable age. The pension rates were 10s per week. These pensions ceased at the age of seventy because the pensioner then came under the operation of the Old Age Pensions Acts, 1908 to 1924, which provided non-contributory pensions for persons at the age of seventy. But these pensioners were exempted from the statutory conditions as to means, residence, and nationality, and were not liable to any reduction of their pension on account of their yearly income.

The war of 1939-45 brought demands for various changes, mostly due to the increase in the cost of living and to higher wage rates. In particular the income wage limit for non-manual workers was increased to £420 per annum.

We now pass to the experiments made in unemployment insurance between the years 1911 and 1934. They were very numerous and many mistakes were made and they might well have a treatise of their own. They cannot be entirely passed over but the reader must realize that the discussion is highly condensed.

The second part of the National Insurance Act, 1911, contained an experimental scheme for unemployment insurance limited to the building trade, constructional works, shipbuilding, mechanical engineering, iron-founding, construction of vehicles, and saw milling. It recognized the necessity for giving benefits partly as in a mutual insurance scheme and partly on the basis of individual contributions. One of the main rules was that five contributions entitled the insured person to one week's benefit, but as the value of the five contributions was about 2s 9d, while the week's benefit was 7s, he could clearly only be paid on this scale by drawing on the contributions of other people. But the personal ratio of contributions

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and benefit provided a strict limitation of benefit, while another limitation was a fixed maximum number of fifteen benefit weeks in any one year. This limited scheme was a success, and at the close of the 1914-18 war there was a demand for a general extension of its provisions and in 1920 its scope was widened to cover, with but two important exceptions, the same classes of persons as health insurance. The general principles of the Act of 1911 were maintained with the slight difference that for convenience of administration six contributions instead of five were required to entitle the insured to a week's benefit. One contribution thus gave a day's benefit. The Act remained an insurance scheme and the term "dole" was not yet used approbriously of it. In 1921 when the post-war depression was beginning to be felt, the conditions for the receipt of benefit were modified, and the period of benefit extended, in the case of a person who could prove that he was (a) normally in insurable employment, and (b) genuinely seeking work. Then in 1922 dependants' benefit was introduced and a married man became entitled to 15s. for himself, 5s. for his wife, and 1s. for each dependent child. This was a new feature of great importance as health insurance benefits had never aimed at providing full family maintenance and had always been independent of the size of the family, and in this respect remained unchanged until the passing of the National Insurance Act, 1946. From 1922 onwards unemployment benefit has been proportionate to family needs, and with every increase in the rate of benefit it has taken on more and more of the character of a maintenance fund. In 1924 two of the statutory conditions for benefit were: (a) thirty contributions in the last two years; and (b) proof by the claimant that he was genuinely seeking work. Theoretically the one in six rule was maintained, and the maximum period for the receipt of benefit was twenty-six weeks in a year, but, on certain conditions as to normal employment, and search for work, extended benefit was payable without regard to these limits. At the end of 1925, as the exceptions had become in practice more important than the rules, the Blanesburgh Committee was appointed "to consider, in the light of experience, what changes in the Unemployment Insurance scheme ought to be made". Their main recommendations were that the one in six rule should be dropped; that thirty contributions in the last two years should be retained as the main condition, thus enabling benefit to be claimed continuously for at least seventy-four weeks; and that the condition as to genuinely seeking work should be continued, and enforced by a quarterly review of cases. These recommendations became law under the

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Unemployment Insurance Act, 1927. Up to April, 1929, "transitional benefit" was to be payable to a person who had paid eight contributions in the last two years, or thirty contributions at any time, on his proving that he was normally in insurable employment, that he was normally seeking such employment, and that in the past two years he had a reasonable amount of employment, which under certain circumstances might be no employment at all. Rates of benefit had been increased to 17s. for a man, 7s. for his wife or adult dependent, and 2s. for each child. Benefits were by this time out of all proportion to contributions, and at the end of 1928 the Treasury was authorized to advance up to £40,000,000 to keep the Unemployment Fund going. Further, the greatest dissatisfaction was being felt and expressed as to the operation of the "genuinely seeking work" condition. Early in 1929 the Morris Committee was set up mainly to consider whether Courts of Referees which determined disputed claims could be guided as to the kind of evidence which should be required for proof of genuine search for work. Put shortly, the conclusion the Committee came to was that genuine search for work was not a workable test, and by an Act of 1930 the "genuinely seeking work" condition was repealed. The same Act also increased the adult dependants' benefit to 9s. a week. Both these alterations tended to increase the deficit in the Unemployment Fund. The periods during which transitional benefit was payable were from time to time extended. By the end of 1930 the financial position had become so acute that a Royal Commission was set up to consider (1) the future scope of Unemployment Insurance, the provisions which it should contain, and the means by which it may be made solvent and self supporting; (2) the arrangements which should be made outside the scheme for the unemployed who are capable of and available for work. On 1st June, 1931, the Commission presented an interim report making certain suggestions as to finances. The financial position was that the Fund was only sufficient to meet half the charges on it. The debt exceeded £80,000,000, and was increasing by £1,000,000 per week. The cost of transitional benefit falling directly on the Exchequer was estimated at £30,000,000 for the year 1931.

Parliament at once took steps to limit benefit to twenty-six weeks in the year following the date of application. Special rules, known as Anomalies Regulations, dealt with Seasonal Workers, Married Women, and other special classes. The main rates of benefit were reduced by 10 per cent. Finally the rates of contribution were increased. As regards transitional payments a means test was imposed, and placed for administration in the hands of

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public assistance committees. All these changes were carried through by the middle of October, 1931. These measures restored the Unemployment Fund to solvency, and gave time in which to await the final Report of the Commission, and to frame permanent legislation on the two points referred to the Commission. This legislation was embodied in the Unemployment Act, 1934, which consists of Part I, amending the existing Unemployment Insurance Acts, and Part II dealing with unemployment assistance. With the latter this work is not concerned, as that part of the scheme was non-contributory and was, in fact, a special form of outdoor relief for the able-bodied unemployed. Part I of the Act of 1934, together with the Act of 1920 and all the subsequent Acts, were consolidated by the Unemployment Insurance Act, 1935.

After the passing of the Act of 1934 there was once more in force a scheme which was a true insurance scheme. This scheme went back in principle to the Act of 1911, with its recognition of both the insurance basis and the individual basis of the claims to be made under it. However, the book-keeping involved in recording individual contributions over a working life of fifty years for some ten million insured was a matter which made it expedient to reduce the individual basis of a claim to something quite simple. This was done by making the duration of additional days of benefit dependent on the contributions actually paid during the five insurance years preceding the claim.

As far as possible the scope of the scheme followed the lines and even the wording of the health insurance scheme. The persons brought within it are defined as in that scheme by wide inclusive definitions, and then limited by specific exclusions. The inclusive definitions are much the same as in the health insurance scheme. It is in the exclusions that the two schemes differed materially. The unemployment scheme added to the exclusions employment in agriculture, in domestic service, and as a female professional nurse. These were the only important differences. In 1936 the Unemployment Insurance (Agricultural) Act, 1936, brought in employment in agriculture but with certain modifications.

The scheme was administered by the Minister of Labour through the Employment Exchanges which were first set up under the Labour Exchanges Act, 1909.

There were four statutory conditions for the receipt of benefit. These were necessary features of an Act dealing separately with unemployment insurance, but they are modified in the unified scheme of the National Insurance Act, 1946.

One of the most difficult questions that had to be settled in

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framing the scheme for unemployment benefit was that of employment lost through a trade dispute. It is clear that it would be unfair to allow a fund to which employers have contributed to be used to support their workpeople during a stoppage of work due to a dispute in which those workpeople were participants or directly interested. But the terms of disqualification inserted in the Acts of 1911 and 1920 paid no regard to the fact that a dispute with a section of workers might throw out of work classes of workers, at the works where the dispute was taking place, who were in no way concerned with it. After considerable controversy, and two amendments of the law, a form of words was reached which gave general satisfaction. Section 26 of the Act of 1935 has become section 13, subsection 1 of the Act of 1946 and will be found on p. 256.

There was a personal disqualification for a period of six weeks or such shorter period as might be determined by the Court of Referees, or the Umpire if an insured contributor (a) lost his employment through misconduct, or (b) voluntarily left his employment without just cause. There was a similar disqualification for refusing or evading suitable work. Great care had been taken not to revive the grievances which the use of the term "genuinely seeking work" gave rise to. All this has been reproduced in section 13, subsection 2 of the Act of 1946 and will be found on p. 257.

The Act proceeded to say that employment is not to be deemed to be suitable in relation to any claimant under certain circumstances. These provisions appear as section 13, subsection 5 of the Act of 1946 and will be found on p. 257.

A claimant who had attained the age of sixteen years, on proving that he satisfies the statutory conditions, became entitled to receive benefit in a benefit year to the following extent: (a) for periods not exceeding in the aggregate 156 days, plus (b) additional days dependent on his contributions and benefits during a preceding period of five years. For additional days to be allowed the claimant must at the beginning of his benefit year have completed five insurance years. Every five contributions paid by him in the last five insurance years entitled him to three additional days, so that the maximum number of additional days was another 156, but from these additional days one day was deducted for every five days' benefit in respect of the benefit years which ended in the last five insurance years.

The system of procedure for the hearing of claims worked on the whole very smoothly and this procedure has been reproduced in the National Insurance (Industries Injuries) Act, 1946, though with some difference in terminology. A similar procedure is

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foreshadowed by the directions contained in section 43, subsection 3 concerning the nature of the regulations governing the mode of deciding questions as to the right to benefit.

We may now consider the provisions of the National Insurance Act, 1946.

The threefold classification of insured persons into (a) employed, (b) self-employed, and (c) non-employed has already been given. Inclusions and exclusions are not elaborated in schedules, as was done in the earlier insurance Acts, but are left to be made by the Minister's regulations, which may in particular provide for (a) including employment under a public or local authority that is not employment under a contract of service; (b) including employment outside Great Britain in continuation of qualifying employment; (c) including or disregarding casual or subsidiary or inconsiderable employment, joint enterprises of husband and wife, and the like; and for (d) treating a person's employment as continuing during periods of holiday, unemployment, or incapacity for work, and the like.

The Act creates a National Insurance Fund on the usual lines, based on contributions from insured persons, employers, and the exchequer. There is no subdivision of the Fund to correspond with the seven separate benefits, nor are the contributions split up, except that under section 37 the Minister may make specified payments in respect of the cost of the National Health Service. Employed men will pay 4s. 7d. per week, and employed women 3s. 7d. per week, but boys under eighteen and men earning 30s. or less a week will pay 2s. 8d. per week, and girls under eighteen and women earning 30s. or less a week will pay 2s. 2d. per week. The corresponding rates payable by the employer are, for male workers over eighteen, 3s. 10d. per week, and for female workers over eighteen, 3s. per week. For boys under eighteen the employers' rate is 2s. 3d. per week and for girls under eighteen it is 1s. 9d. For those over eighteen who earn 30s. a week or less the employer will pay as an extra the amount which has been deducted from the corresponding worker's rate. The united contribution for an adult male is 8s. 5d. per week and for an adult female 6s. 7d. per week. Self-employed persons if males will pay 6s. 2d. per week, if females, will pay 5s., boys if under eighteen will pay 3s. 7d. per week, and girls if under eighteen will pay 3s. Five years after the introduction of new pension rates contributions will be slightly increased. Power is given to the Treasury by order to vary these rates if it thinks it is expedient so to do with a view to maintaining a stable level of employment. Where an employer has to pay a contribution, he

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must pay the worker's contribution at the same time, and has the right to deduct the latter from the worker's remuneration. Regulations may provide for contributions being paid by insurance stamps, or by some alternative method.

The first two benefits—unemployment benefit and sickness benefit—are dealt with together in sections 11 to 13.

A person will be entitled to unemployment benefit in respect of any day of unemployment which forms part of a period of interruption of employment, and to sickness benefit in respect of any day of incapacity for work which forms part of such a period on condition that he is under pensionable age and satisfies the relevant contribution conditions,¹ but for either benefit there is to be no payment for the first three days unless within thirteen weeks of the first day he has a further nine days of interruption of employment. For unemployment benefit he must be capable of work and be available for employments. For sickness benefit he must be incapable of work by reason of some specific disease or bodily or mental disablement. Any two days of interruption of employment, whether consecutive or not, within a period of six consecutive days are to be treated as one period, and any two such periods not separated by more than thirteen weeks are also treated as one period. Sundays, or some other prescribed day, is not to count for either benefit. A day's benefit is one-sixth of the weekly benefit rate. Unemployment benefit has a limit of 180 days (thirty weeks), unless the insured person qualifies under regulations for additional days of benefit dependent on his previous contributions and his previous receipt of benefit.

There is also a provision of a temporary character for "extended benefit" which is set out on p. 267.

For persons who have paid less than 156 contributions since entry into insurance sickness benefit has a limit of 312 days (fifty-two weeks). To requalify for either benefit he must pay thirteen fresh contributions.

Trade Dispute.—The clause of the Act as to trade disputes runs as follows: "A person who has lost employment by reason of a stoppage of work which was due to a trade dispute at his place of employment shall be disqualified for receiving any benefit as long as the stoppage of work continues, except in a case where he has, during the stoppage of work, become *bona fide* employed elsewhere in the occupation which he usually follows, or has become

¹ The contribution conditions will be found in Appendix A, which reproduces the Third Schedule of the Act, and sets out the contribution conditions for the various benefits.

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regularly engaged in some other occupation ; provided that this subsection shall not apply where he proves (a) that he is not participating in, or financing, or directly interested in the trade dispute which caused the stoppage of work ; and (b) that he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage is taking place, any of whom are participating in, or financing, or directly interested in the dispute."

Personal Disqualifications.—These have already been shortly stated in noticing the provisions of the Unemployment Insurance Act, 1934. They cover losing employment through misconduct, voluntarily leaving employment without just cause, and refusing or evading suitable work. These latter disqualifications are very carefully worded. They ensue as follows : (a) after a situation in any employment which is suitable in his case has been notified to a claimant by an employment exchange or other recognized agency, or by an employer as vacant, or about to become vacant, he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him ; or if a claimant (b) has neglected to avail himself of a reasonable opportunity of suitable employment ; or (c) he has without good cause refused or failed to carry out any written recommendations given to him by an officer of an employment exchange with a view to assisting him to find suitable employment, being recommendations which were reasonable having regard both to his circumstances and to the means of obtaining that employment usually adopted in the district in which the claimant resides ; or (d) he has without good cause refused or failed to avail himself of a reasonable opportunity of receiving training approved by the Minister of Labour in his case for the purpose of becoming or keeping fit for entry into or return to regular employment.

Section 13, subsection 5, defines what is unsuitable employment, as follows : (a) employment in a situation vacant in consequence of a stoppage of work due to a trade dispute ; or (b) employment in his usual occupation in the district where he was last ordinarily employed at a rate of remuneration lower, or on conditions less favourable than those which he might reasonably have expected to obtain having regard to those which he habitually obtained in his usual occupation in that district, or would have obtained had he continued to be so employed ; or (c) employment in his usual occupation in any other district at a rate of remuneration lower, or on conditions less favourable, than those generally observed in

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that district by agreement between associations of employers and employees, or failing any such agreement, than those generally recognized in that district by good employers.

These provisions secure the maintenance of the claimant's status in his usual occupation. But there are cases, especially in depressed areas, where the return of a claimant to work in his usual occupation seems unlikely. Accordingly there is yet another provision by which after the lapse of such an interval from the date on which an insured contributor becomes unemployed as in the circumstances of the case is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in his usual occupation, but it must be employment at a rate of wages not lower, and on conditions not less favourable than those generally observed by agreement between associations of employers and employees, or failing such agreement than those generally recognized by good employers.

As regards sickness benefit, disqualifications may be imposed by regulations. Under these a person may be disqualified for such period not exceeding six weeks as may be determined in such manner as the regulations prescribe if (a) he has become incapable of work through his own misconduct, or (b) he fails without good cause to attend for or submit himself to such medical or other examination or treatment as may be required by the regulations, or to observe any prescribed rules of behaviour.

The last sentence is reminiscent of Friendly Society practice which very commonly made persons on sick pay be at home by a certain time of the evening, and in other ways comport themselves in such a way as to promote speedy recovery.

There is also a general power given to the Minister to make regulations imposing additional conditions for the receipt of either class of benefit, or imposing restrictions on the rate and duration of benefit where there are special circumstances which make it necessary to exercise this power in order to prevent inequalities or injustice to the general body of employed persons, or of employed and self-employed persons.

The normal rate of benefit for a person over the age of eighteen not being a married woman is 26s. per week for the claimant himself, with 7s. 6d. increase for a child and 16s. for an adult dependant. As these two additions also apply in the case of a retirement pension, and a widow's allowance, further explanations will be given later. Under the age of eighteen the rate is 15s. per week. The rates for a married woman vary according to circumstances, but where she has full family responsibility she gets the same benefit as a man.

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Maternity Benefit.—This consists partly of a maternity grant and partly of an attendance allowance or a maternity allowance. The contribution conditions differ for these alternative allowances and a woman is not entitled to an attendance allowance if she satisfies the contribution conditions for a maternity allowance. Further, a woman is not entitled to a maternity grant or an attendance allowance by virtue both of her own and of her husband's insurance.

Let us consider first the case of the lower benefit, namely, maternity grant and attendance allowance. There are two conditions. It must be certified by a qualified practitioner¹ that she has been confined, and she or her husband must satisfy the relevant contribution conditions.² The maternity grant is £4. The attendance allowance is 20s. per week for four weeks from the date of the confinement. Regulations may impose a disqualification for the receipt of the allowance if the woman during these four weeks does any work as an employed or self-employed person or fails without good cause to observe any prescribed rules of behaviour. Regulations may also provide that the maternity grant may be payable by virtue of a certificate that it is to be expected that she will be confined.

The conditions for the receipt of a maternity allowance are : (a) a certificate by a qualified practitioner that it is to be expected that the woman will be confined in a week specified in the certificate, not being more than the prescribed number of weeks after that in which the certificate is given ; and (b) satisfaction of the relevant contribution condition.² The period for which the allowance is payable is thirteen weeks beginning with the sixth week before the expected week of confinement. The allowance is at the rate of 36s. a week.

Regulations may impose the same disqualification for working during the period of the allowance as in the case of the attendance allowance, and also disqualification if the woman fails without good cause to attend for, or to submit herself to, any medical examination which is required to settle any question which arises as to the correctness of the certificate.

Widow's Benefit.—This benefit takes three forms. First there is a temporary allowance payable during the thirteen weeks next following the husband's death. Then, as the mother of a family, there is the widowed mother's allowance payable so long as the childhood of at least one of the family continues. Finally, there is her personal pension.

¹ This term includes a certified midwife as well as a medical practitioner.

² See Appendix A.

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In all cases it is a first condition that the husband satisfied the relevant contribution conditions,¹ and there is a second condition which is different in each case. For the widow to be entitled to the thirteen weeks' allowance at the husband's death, either he must not have been entitled to a retirement pension, or she must have been under pensionable age. This allowance is 36s. per week plus 7s. 6d. for the first or only child. For the widowed mother's allowance the family must include at least one child, who at the husband's death was a child of his family, or is a son or daughter of theirs. The weekly rate of this allowance is 33s. 6d., which can be regarded as 26s. plus 7s. 6d. This is not payable while the thirteen weeks' allowance is payable, and endures thereafter so long as the family continues to include the qualifying child.

The condition for a widow's personal pension is that at the husband's death he and the widow had been married for not less than ten years, and she was over the age of fifty but under pensionable age. This is not payable while the thirteen weeks' allowance is payable, or while the widowed mother's allowance is payable. It endures thereafter till she reaches pensionable age. The weekly rate is 26s.

There is an alternative condition for a widow's pension if it is preceded by a widowed mother's allowance. If she ceases to be entitled to this at a time when (a) she is over the age of forty but under pensionable age, and (b) ten years have elapsed since the date of her qualifying marriage, then the conditions just stated will be regarded as satisfied.

Widow's benefit is put an end to by her death or re-marriage, and is suspended if she cohabits with a man as his wife.

The allowances (other than the thirteen weeks' allowance) are liable to reduction on account of her earnings. If in any week she earns over 30s. then for the next week the rate payable is reduced by 1s. for each complete shilling of the excess.

Regulations may provide for the waiver of the pension conditions in the case of a widow who by reason of any infirmity is incapable of self-support and is under pensionable age; and for the payment of the pension while she remains incapable of self-support and for its continuance if she becomes capable of self-support when she is over fifty but under pensionable age, and if ten years have elapsed since the date of the qualifying marriage.

Guardian's Allowance.—The conditions for this benefit are that there is in the family of the guardian a child whose parents are dead, of whom one at least was an insured person. These conditions

¹ See Appendix A.

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may be modified by regulations to meet the special cases of an adopted or illegitimate child, divorced parents, or a parent that cannot be traced. The wife in the family is normally entitled to the allowance, which is 12s. a week.

Retirement Pensions.—A person is entitled to this benefit if over the pensionable age (sixty-five for a man and sixty for a woman) and if retired from regular employment. The relevant contribution conditions must be satisfied.¹

Where a person has never had a gainful occupation he will be treated as having retired. Retirement is not nullified by occasional gainful occupation, or an inconsiderable extent of it.

The prescribed notice of his retirement must be given by the claimant. After 5 years have elapsed from his attaining pensionable age a person is deemed to have retired.

The basic rate is 26s. a week, with a possible 7s. 6d. for a child, and 16s. for an adult dependant. If the pensioner is a woman who is entitled by virtue of her husband's insurance and he is alive, the weekly rate is 16s.

As a person who does not retire at sixty-five or sixty, as the case may be, continues to pay contributions there is a provision that every twenty-five contributions payable by him or her as employed or self-employed, will increase the weekly rate of pension by 1s.

As the occasional earnings of a pensioner may be substantial there is a provision that earnings over 20s. in any week reduce the next week's pension by the amount of the excess, reckoning only complete shillings. This only applies to the five years following the attainment of pensionable age.

A married woman entitled to a retirement pension by virtue of her husband's insurance is subject to special provisions. She cannot draw more than one pension, but if she is entitled through her own and her husband's insurance she is given a choice which pension to draw.

Death Grant.—This is an entirely new provision and its insertion in the Act is due to the fact that the voluntary system under which provision was made by working class families for funeral expenses and the like had proved itself unsatisfactory in some of its aspects. A person is entitled to this grant in respect of the deceased if (a) he has reasonably incurred, or reasonably intends to incur, in connection with the deceased's death expenses in connection with the funeral of the deceased, or the attendance thereof of himself and other persons or with the purchase of mourning; and (b) that the deceased either himself satisfied the relevant contribution

¹ See Appendix A.

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conditions or was at death the husband, wife, widower, widow, or a child of the family of a person satisfying these conditions. The amount of the grant is graded upwards from £6 where the deceased was under the age of three to £20 where the deceased was over the age of eighteen. Only one person is entitled to the death grant, and regulations may be made for settling competing claims.

Additional Rights to Benefit.—Mention has already been made of the allowances for a child and for an adult dependant, but some further details may be given.

The additional benefit for one child is given as an addition to unemployment benefit, sickness benefit, a retirement pension, or a widow's allowance for any period during which the beneficiary has a family which includes a child or children and is given in respect of the only child, or the elder or eldest of the children, as the case may be. There is no need to provide for the other children as provision for them is made by the Family Allowances Act, 1945.

The ordinary meaning of a child of a family is extended, where the beneficiary is a man, to cover a child of the family of any woman for the time being residing with him if such child (a) is an illegitimate child of theirs, or (b) was born not less than six months before the day for which benefit is claimed, and wholly or mainly maintained by the beneficiary throughout the six months ending immediately before that day.

Where both man and wife are entitled to a retirement pension there is no duplication of a child's allowance.

The increase of benefit for an adult dependant may be an addition to unemployment benefit, sickness benefit, or a retirement pension. The normal case is that of a beneficiary who is a married man. It is given to him for any period during which he is residing with, or is wholly or mainly maintaining his wife who is not engaged in any gainful occupation from which her weekly earnings exceed 20s.

In the case of unemployment benefit or sickness benefit where the beneficiary is a married woman, she is entitled to this additional benefit if she is wholly or mainly maintaining her husband who is incapable of self-support.

In the case of a man beneficiary it is also given if he has residing with him and is wholly or mainly maintaining such other adult relative as may be prescribed. It may also be payable in respect of some adult female who has the care of a child or children of the beneficiary's family and who satisfies the prescribed conditions.

The increase in benefit is only given in respect of one person. In the case of a retirement pension the increase in benefit is not

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given where the beneficiary is a married man and his wife is over pensionable age.

Contributions Excused or Credited.—Regulations may provide for excepting insured persons from liability to pay contributions for periods of unemployment or of incapacity for work, or for periods of full-time education or unpaid apprenticeship, or when they are not in receipt of an income of £104 a year, and possibly other periods. In such cases they may be credited with the contributions but only for the purpose of entitling them to unemployment benefit or sickness benefit for periods after they have ceased to be so excepted.

Partial Satisfaction of Contribution Conditions.—This case is not provided for directly by the Act, but under section 25 regulations may be made dealing with this matter.

Deferred Pensions.—We have seen that pensioners are given the option of going on with employment and deferring their pensions. If the option is exercised the right to unemployment benefit and sickness benefit is given to them by section 26, on certain conditions and with certain limitations.

Supplementary Schemes (under section 27).—A supplementary scheme is one which either provides for additional payments in cases for which benefit is provided for by the Act, or provides payments in other cases. Such a scheme requires the approval of the Minister. It must not receive an Exchequer grant.

Claims and Notices.—Claims to benefit must be made in the prescribed manner which will be defined by regulations.

It has already been pointed out that the Family Allowances Act, the Industrial Injuries Act, and the National Insurance Act are all parts of one scheme. In order that ignorance of the exact nature of his claim may not prejudice a claimant the following provision has been inserted. Any claim for any benefit under the National Insurance Act may be treated in the alternative as a claim for such other benefit under it as may be prescribed, or as a claim for such benefit under the Industrial Injuries Act as may be prescribed, or as a claim in prescribed cases for a payment under the Family Allowances Act; and any claim for benefit under the Industrial Injuries Act, or a payment under the Family Allowance Act may be treated as a claim for such benefit under the National Insurance Act as may be prescribed.

Absence Abroad and Imprisonment.—Except where regulations otherwise provide, a person is disqualified for receiving any benefit, and an increase of benefit is not to be payable in respect of any person as the beneficiary's wife or husband, while that person is

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absent from Great Britain, or undergoing penal servitude, imprisonment, or detention in legal custody.

Hospital Treatment.—Regulations may also provide for adjustment or suspension of benefit in the case of a person while undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Liability of Employer.—If an employer fails to pay contributions, or to comply with regulations as to contributions, and as a result an employed person in his employment has lost in whole or in part any unemployment, sickness, or maternity benefit such person is entitled to recover summarily from the employer as a civil debt a sum equal to the amount of the benefit so lost.

Finance.—It has already been said that all contributions and the Exchequer grant are paid into a National Insurance Fund. The assets taken over from the superseded schemes constitute a National Insurance (Reserve) Fund. The amount to the credit of the Unemployment Insurance Fund is a very substantial amount, being given as 431 million pounds on 31st December, 1946. Provision is made for a report from the Government Actuary every five years on the financial condition of the Fund and the adequacy or otherwise of the contributions to support the benefits and to meet the other charges on the Fund. In the years falling between these quinquennial reports there is to be annual review of the operation of the Act. Reports are to be made to the Treasury and have to be laid before Parliament.

Advisory Committee.—The reader will have noticed that much of the detailed legislation is not contained in the Act itself, but in regulations to be made under powers given to the Minister by the Act. Legislation by regulations has long been a feature of Factory Acts and other social or industrial legislation, but the dangers of such legislation were not realized at first, and it was not until, under the Unemployment Insurance Act, some of this extra parliamentary legislation came in for severe criticism that steps were taken to provide additional safeguards. In the year 1931, which was the year of the great industrial depression, there were three Unemployment Insurance Acts, and the last of these broke new ground by bringing into being an Advisory Committee and it was only after consultation with this Committee that the Minister could make regulations for anomalous cases. The Royal Commission on Unemployment Insurance viewed this experiment with favour and accordingly the Unemployment Insurance Act, 1934, by section 17, brought into existence the Unemployment Insurance Statutory Committee with a constitution in accordance with the terms of the

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fifth schedule to the Act. Substantially this legislation has been reproduced with only one important difference, which relates to the finance of the Insurance Fund. As we have seen, the making of reports on this matter has been placed in the hands of the Government Actuary. Section 41 of the National Insurance Act, 1946, sets up the National Insurance Advisory Committees to give advice and assistance to the Minister in connection with the discharge of his functions under the Act and to perform any other duties allotted to them under the Act. Its constitution is fixed by the fifth schedule, and the more important points are as follows. It is to consist of a Chairman to be appointed by the Minister, and not less than four nor more than eight members. At least one member must be a woman. Members of Parliament are not eligible. Three of the members must be appointed by the Minister after consultation with three bodies respectively, namely organizations of employers, organizations of workers, and either friendly societies or organizations of them.

The Minister may refer to the Committee for consideration and advice such questions relating to the operation of the Act as he thinks fit, including questions as to the advisability of amending the Act. The Minister must furnish the Committee with such information as they may reasonably require for the proper discharge of their functions.

The functions of the Committee in respect to the making of regulations are set forth in section 77. Before making any regulations for carrying out in Great Britain the permanent provisions of the Act the Minister must submit to the Committee a preliminary draft of them. The Committee must then give notice of its receipt so that persons affected by it can obtain copies and send in objections. Not less than fourteen nor more than twenty-eight days are to be allowed for sending in objections. After that the Committee must consider the preliminary draft and the objections, if any, and make a report to the Minister.

Certain regulations have to be laid before Parliament and approved by resolution of each House of Parliament. In these cases the report of the Committee on the preliminary draft must also be laid before Parliament together with a statement showing what amendments, if any, have been made since the report of the Committee and what effect, if any, has been given to any recommendation of the Committee, and if effect has not been given to any recommendation, giving reasons for not adopting it.

Local Advisory Committees.—Regulations may provide for the reference to local committees representing employers or insured

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persons or both, for consideration and advice, of questions bearing upon the administration of the Act.

Determination of Claims and Questions.—As was pointed out in considering the Industrial Injuries Act earlier insurance legislation contained excellent precedents as to procedure. Then again the Industrial Injuries Act itself contains certain provisions which were equally applicable to the circumstances for which the National Insurance Act was legislating. For instance, certain questions might arise about children, and families with children, and under both Acts these are to be determined in the same way as a corresponding question arising in respect of allowances under the Family Allowances Act, 1945; and any decision of any such question if given for the purposes of that Act, or of the Industrial Injuries Act, is to have effect for the purposes of the National Insurance Act, or if given for the purposes of the last-mentioned Act, is to have effect also for the purposes of those Acts.

As regards questions as to the right to benefit, the mode of determination is to be prescribed by regulations, which must be in accord with certain rules. The Minister must not himself, with certain exceptions, decide these questions, but they must be submitted in the first instance to an officer appointed by the Minister. The officer is to have authority either himself to determine any such questions or to refer it to a local tribunal, and appeals from the officer's decisions must lie to the tribunal. Appeals from the tribunal are to be to a National Insurance Commissioner or his deputy, or to a tribunal presided over by the National Insurance Commissioner or a Deputy Commissioner. The questions excepted are: (1) whether the contribution conditions for any benefit are satisfied, or otherwise relating to an insured person's contributions; (2) as to entitlement to a death grant; (3) as to competing persons for an increase of benefit; and (4) as to the class of insured persons in which a person is to be included.

Regulations may also provide for reference to the High Court for decision of any question of law arising in connection with the determination of a question by the Minister, and for appeals to the High Court from the decision of the Minister on any such question of law.

Regulations may provide that a claimant may be represented at the hearing of his case by another person whether having professional qualifications or not.

Inspectors.—Provision is made for the appointment of inspectors with the necessary powers for seeing that the Act is carried into effect.

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Special Classes.—The Act applies to persons employed by or under the Crown, but with possible modifications made by Order in Council. Members of the regular naval, military, or air forces of the Crown are in general insured persons. As regards mariners and airmen the Minister may make regulations modifying the provisions of the Act.

As regards married women the Minister may make regulations modifying the provisions of the Act, and such regulations must except a married woman from insurance while she is married and a non-employed person unless she elects to remain in insurance.

Temporary Provisions for Extended Unemployment Benefit.—Under section 62, for the period of five years beginning with the appointed day on which the Act comes into operation, regulations may authorize the Minister to pay this benefit to insured persons who have exhausted their right to it. He must act on the recommendation of a local tribunal, and pay the benefit for such number of days as may be specified in the recommendation. The local tribunal must not impose a "means test" but must have regard to the particular circumstances of the applicant, including the industrial conditions in the district where he ordinarily resides, and to any general directions issued by the Minister for the guidance of local tribunals. As in the case of extended benefit under previous legislation these payments are not to be borne by the Insurance Fund, and though paid out of it in the first instance are to be repaid out of moneys provided by Parliament. By *S.R. and O.*, 1946, No. 2152, the Minister has established now a system of extended benefit on the lines contemplated in section 62 of the Act.

Courses for the Unemployed.—Certain sections of the Unemployment Insurance Act, 1935, are revised to authorize the Minister to make grants out of the Insurance Fund to an amount not exceeding half a million pounds in any year towards expenses incurred by the Minister of Labour in respect of the attendance at authorized courses of persons entitled to unemployment benefit, or of persons who have exhausted their benefit. These grants count as expenses of the Minister of Labour.

Temporary Restrictions on Death Grant.—Death grant is not payable in respect of the death of any person within a year from the appointed day. It is not payable in respect of the death of any person who immediately before such day was over pensionable age. It is not payable in respect of any child who was under the age of ten on the appointed day unless such child attain the age of ten.

The death grant is reduced from £20 to £10 in respect of a man who immediately before the appointed day was over the age of

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fifty-five, and in respect of a woman who was at that time over the age of fifty.

National Health Service Act, 1946.—This Act, to which the Royal Assent was given on 6th November, 1946, imposes the duty on the Minister of Health to establish for England and Wales a comprehensive health service for the improvement of the physical and mental health of the people, and the prevention, diagnosis, and treatment of illness. The services to be provided are to be in general free of charge.

A Central Health Service Council advises the Minister who may, after consultation with the Central Council, set up standing Advisory Committees. The Central Council has to make Annual Reports, which the Minister lays before Parliament with or without comments.

The first service is the hospital and specialist service. This involves the transfer to the Minister of all hospitals that are not teaching schools. Then other health services provided by a Local Health Authority, acting through an Executive Council, can be summarized as follows: (1) the provision of health centres, with departments for medical, dental, pharmaceutical, and specialist treatment; (2) the care of mothers and young children; (3) mid-wifery; (4) health visiting; (5) home nursing; (6) vaccination and immunization; (7) ambulances; (8) prevention of illness, care during illness, and after care; (9) domestic help in illness.

As part of the general medical service the Executive Council must provide, in accordance with regulations, personal medical services for all persons in their area who wish to take advantage of the arrangements. Pharmaceutical services are given on the order of the medical practitioner rendering the service.

The exceptions to free service are as follows:—

In hospitals part payment may be charged for accommodation in single rooms or small wards. Also accommodation in certain circumstances may be provided for private patients paying the whole cost.

Where at the request of the patient he is supplied with appliances of a more expensive type, he may have to contribute to the cost. This applies to medical, surgical, dental, and ophthalmic appliances. Also charges may be made for repairs to appliances which have suffered through careless treatment. Reasonable charges may be made for the provision of care during illness, and domestic help in illness.

SECTION VII

THE STATE AND TRADE DISPUTES

CHAPTER I

TRADE UNIONS AND TRADE DISPUTES

CHAPTER II

CONCILIATION

SECTION VII

THE STATE AND TRADE DISPUTES

CHAPTER I

TRADE UNIONS AND TRADE DISPUTES

Combination between workers in the same craft seems instinctive, and efforts to repress it have seldom been entirely effective. In England the old-established principle of the Common Law under which an agreement in restraint of trade was held to be against public policy, and therefore illegal, seriously handicapped the early stages of Trade Union development in the workers' ranks. Up to the year 1824 there was also severe legislation against combinations. In that year Place and Hume secured a short-lived triumph by getting Parliament to repeal the Combination Laws. When Parliament realized what it had done it enacted in 1825 a new Act, the preamble of which stated that "such combinations are injurious to trade and commerce, dangerous to the tranquillity of the country, and especially prejudicial to the interests of all who are concerned in them" and that "it is expedient to make further provision as well for the security and personal freedom of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers". It is from this Act that the terms "intimidation", "molestation", and "obstruction" date. Under these headings practically all the usual steps in threatening or carrying out a strike became misdemeanours. The one permanent result of the efforts of Place and Hume was that workmen were allowed to hold meetings to discuss wages and hours of labour, and the mere entering into an agreement among themselves on these points was not to render them liable to any penalty. The interpretation given to the penal clauses of the Act of 1825 was so wide that in 1857 a new Molestation Act was passed, enacting that no workman or other person, whether actually in employment or not, should by reason merely of his entering into an agreement with any other workman for the purpose of fixing the rate of wages at which they should work, or by reason

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merely of his endeavouring peaceably and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work in order to obtain the rate of wages or altered hours of work so fixed or agreed upon should be deemed to be guilty of "molestation" or "obstruction", and should not be subject or liable to any prosecution or indictment for conspiracy; but nothing in the amending Act was to be held to authorize any workman to break any contract, or to authorize any attempt to induce any workman to break any contract. In 1867 in the course of a strike in the cutlery trade in Sheffield, certain "rattening" outrages occurred and the public became so concerned about Trade Unions that a Royal Commission was set up to inquire into existing legislation. However, largely owing to the skill of Frederick Harrison, the Commission was persuaded to recommend, not merely a new definition of molestation, etc., but the legalizing of Trade Unions, for they still remained illegal associations under the Common Law. The Trade Union Act, 1871, carried out the latter recommendation, and the second section declared that "the purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such Trade Union liable to criminal prosecution for conspiracy or otherwise". The third section enabled Courts of Law to give effect to the agreements with outsiders and the trusts to which a Trade Union might be a party. But the Act forbade Trade Unions to be incorporated by registration under the Friendly Societies Act, and stipulated that agreement between the members themselves should not be enforceable by legal proceedings. In these matters Trade Unions have to rely on the voluntary allegiance of their members, and their power of expulsion, and members have to rely on the good faith of the governing body. Three classes of agreements are specified in the Act as unenforceable at law, viz. :—

(1) Any agreement between the members as such concerning the conditions on which any members for the time being shall or shall not sell their goods, transact business, employ, or be employed.

(2) Any agreement for the payment of any person of any subscription or penalty to a Trade Union.

(3) Any agreement for the application of the funds of a Trade Union (a) to provide benefits to members, and (b) to provide strike-pay, etc., to non-unionists.

The first class of these unenforceable agreements raises a point which has not yet been stated, that combinations of masters are just as much Trade Unions as combinations of workmen. Employers' Associations are therefore Trade Unions in the legal sense, though

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common speech draws a distinction. There is, however, a practical distinction between combinations of workmen and combinations of employers which deserves attention. The latter are often very much concerned "with the conditions on which any members shall or shall not sell their goods". This side of Trade Union law is really Commercial Law and not Industrial Law, and will not be dealt with in this book.

The Trade Union Act, 1871, though it did not incorporate Trade Unions, provided for their registration and imposed obligations and conferred privileges on such Unions as registered themselves under the Act. Every registered Trade Union must have a registered office and must make annual returns to the Registrar of Trade Unions. By registration it obtains the right to hold land, not exceeding one acre, and buildings for the purposes of the Union, and of vesting its property in trustees. It can recover in a Court of Law from its treasurer or other officers, money or property of the Union if wrongly withheld.

The general functions of a Trade Union have been made clear by the quotations already made from the Trade Union Act, 1871, but the legal definition of a Trade Union has not so far been quoted because the definition now in force is contained in the Trade Union Amendment Act, 1876, and not in the Act of 1871. It is in these terms: "The term 'Trade Union' means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the Principal Act (that of 1871) had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

We have seen that in connection with strikes legislation had created new offences dealing with "molestation" and "obstruction", but the law had another resource for dealing with strikes, which has already been mentioned but not defined, namely "criminal indictment for conspiracy." The Common Law doctrine of conspiracy is bound to appear subtle because it is usually brought into play to punish two or more people for doing together acts which if they had done separately would not be punishable.

For instance, A and B agree to carry out a joint burglary, and are caught. A can be punished as a burglar and B can also be so punished, and there is no point in punishing them as conspirators. But suppose A is dissatisfied with his wages and gives notice to

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leave, and in due course acts on it. A has acted within his legal rights. Suppose B, another workman for the same employer, without any knowledge of A's action also gives notice and leaves. He also has acted within his legal rights. Now take the case of A and B agreeing to act together and deciding to give in their notices if they are not given 1*d.* per hour increase of wages. A has put some restraint on B's liberty and B has put the same restraint on A's liberty, and their actions are directed against their master, and in the view of the law their united action is an illegal conspiracy, for an agreement in restraint of trade is illegal. Two consequences follow: (1) both A and B could be punished as criminals; (2) as their united illegal action was directed against a particular master, he may be able to show that his business suffered loss, in which case he can bring a civil action against the wrongdoers and obtain a verdict for damages. Of course, damages against individual workmen are generally not worth recovering, but we shall find that this principle was applied at a later date to proceedings taken against Trade Unions. At the time with which we are now concerned it was the criminal consequences which received attention, and the civil consequences were not in men's minds at all. Jevons in his *The State in Relation to Labour* summed up the position in these words: "Until quite recent years the Common Law gave power to the judges, or they at any rate assumed the power, to treat any combination of labourers aiming at an increase of wages as a conspiracy against the public weal, an attempt at public mischief, which could be punished as a misdemeanour by fine and imprisonment." The Trade Union Act, 1871, was passed through Parliament side by side with the Criminal Law Amendment Act, 1871 (an Act to amend the Criminal Law relating to violence, threats, and molestations). This Act did not satisfy the workmen, and in 1875 they secured the passing of the Conspiracy and Protection of Property Act, 1875. The third section of that Act was in the clearest terms and enacted that an agreement or combination by two or more persons to do or promise to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime. On the other hand, it was made a punishable offence, in the case of persons employed in the public supply of gas or water, or to whose charge is specially committed the care of human life or of valuable property, to break wilfully and maliciously their contracts of service.

For about twenty years the industrial world thought that the Acts of 1871 and 1875 between them had placed Trade Unions in

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a satisfactory position, facilitating on the one hand the making of collective bargains as to wages and conditions of labour, and on the other hand not penalizing a strike if it was carried on in a peaceable and law-abiding manner. The Final Report of the Royal Commission on Labour which was issued in May, 1894, contained this passage: "Powerful Trade Unions on the one side and* powerful Associations of Employers on the other have been the means of bringing together in conference the representatives of both classes, enabling each to appreciate the position of the other, and to understand the conditions subject to which their joint undertaking must be conducted. The mutual education hence arising has been carried so far that, as we have seen, it has been found possible to devise articles of agreement regulating wages which have been loyally and peaceably maintained for long periods." The Commission went on to prophesy "a more settled and pacific period", and possibly their forecast would have been more closely realized but for the fact that the legal advisers of the employers were already at work at the familiar task of getting round the law, and the employers, to their ultimate cost as it turned out, were pressing home every victory in the Courts of Law. For instance in 1893, it was held that it would be actionable not merely to persuade men to throw up their work without notice, but also to persuade men from going into the employment of a particular master. Then in 1896 an aggrieved employer invoked the aid of the Chancery side of the High Court of Justice, and obtained an injunction to restrain picketing during a strike from a Chancery Judge who decided that the picketing was in fact an illegal watching or besetting. Then in 1901 the House of Lords in the case of *Quinn v. Leatham* (1901, A.C. 495) pointed out that an action by two persons might be a civil wrong, when a similar action by one only would not be actionable. In other words the old doctrine of conspiracy which in its criminal aspect had been put an end to by the Conspiracy and Protection of Property Act, 1875, could be used by an aggrieved employer to get damages from his workers for doing in combination what they were entitled to do separately, namely hand in their notices to leave work.

In the same year the House of Lords in the *Taff Vale Case* (1901, A.C. 426) had held that a Trade Union could be sued in its registered name, and that the funds held by its trustees could be made to answer for the wrongful acts of its agents and officers. As the whole object of a strike is to cause a stoppage of work to the detriment of the employer, under these two pronouncements of the House of Lords the strike weapon became a boomerang. However

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legally it was conducted, if and so far as it hurt the employer, the Trade Union funds were liable to pay damages to make good the hurt it had done. The Trade Unions at once started an agitation to obtain the measure of protection which they had been supposed to enjoy before these various legal decisions or dicta had been pronounced. This end was achieved by the passing of the Trade Disputes Act, 1906. In fact it was now the turn of the men's Trade Unions to press home an advantage, and they obtained somewhat more than a reversal of objectionable decisions.

Section 1 of the Act of 1906 enacts that "an act done in pursuance of an agreement or combination by two or more persons shall if done in contemplation or furtherance of a trade dispute, not be actionable, unless the act, if done without any such agreement or combination, would be actionable". This is modelled on the wording of section 3 of the Conspiracy and Protection of Property Act, 1875, and overrules the dictum in *Quinn v. Leatham*.

Section 3 of the Act of 1906 enacts that "an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or labour as he wills". This covers two quite ordinary incidents of a strike. For example, the Trade Unionists at a works have given notice and served their notices, and when they come out they persuade the non-union men to come out with them, though these men have not given notice. The Trade Unionists are under no liability, though of course the non-union men remain individually liable for breach of contract. Again men on strike persuade men who are about to take their places not to do so. They are under no liability for this.

Section 4 of the Act of 1906 repeals the decision in the *Taff Vale* case. Some people, and in particular the late Professor A. V. Dicey, considered that the words used were wider than necessary. They are as follows: "An action against a Trade Union, whether of workmen or masters, or against any member or officials thereof on behalf of themselves and all other members of the Trade Union in respect of any tortious act alleged to have been committed by or on behalf of the Trade Union, shall not be entertained by any Court." "Tortious act" is the technical equivalent of the term "a civil wrong". It will be noticed that in sections 1 and 3 the operation is limited to acts done in contemplation and furtherance

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of a trade dispute, while section 4 covers any tortious act committed by or on behalf of the Trade Union concerned.

A further concession to the workmen was contained in section 2, which defined what is popularly called "peaceful picketing". It ran as follows: "It shall be lawful for one or more persons, acting on their own behalf, or on behalf of a Trade Union, or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, *or of peacefully persuading any person to work or abstain from working.*" The italics mark the new provision.

So far nothing has been said about Trade Unions and political objects. The early days of the Labour Party were marked by pronounced impecuniosity, but the idea of special representation of labour interests in Parliament gradually spread, and certain Trade Unions began to make a levy on their members, and used the funds so raised for running parliamentary candidates and maintaining Members of Parliament when their candidates were successful. This levy was compulsory, and a Mr. Osborne, who was a member of the Amalgamated Society of Railway Servants, but not in favour of the Parliamentary Labour Party, resolved to test its legality. The House of Lords (1910, A.C. 87) decided that it was not within the powers of a Trade Union registered under the Trade Union Acts, 1871 and 1876, to maintain out of its funds Members of Parliament for the support of the interests of the Union. This decision caused considerable feeling amongst trade unionists and in 1913 Parliament passed the Trade Union Act, 1913, which put the historic objects of a Trade Union into a class by themselves, and called them "statutory objects" and allowed a Trade Union to have in addition objects and powers other than statutory objects, so long as the latter were its principal objects. The task of deciding whether this condition is fulfilled is left to the Registrar of Friendly Societies, and only Trade Unions who fulfil it can be registered as Trade Unions, while Trade Unions who do not apply for registration can apply for certificates that they are Trade Unions within the meaning of the Act of 1913. The Act then proceeds to lay down conditions for the creation of a Political Fund. The fund must be approved by a majority on a ballot vote; it must be kept separate from other funds; objecting members must be able to obtain exemption by giving written notice and must not be placed under any disability or at any disadvantage. The Registrar of Friendly Societies was charged with the duty of

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approving the rules for the ballot, and hearing the grievances of exempt members.

After the passing of the Trade Disputes Act, 1906, there came another period of twenty years in which the legal position as to disputes and strikes remained unchanged. But this time it was the men's Trade Unions who were inclined to press their legal rights too far. The sympathetic strike became a popular weapon, and then in 1926 there came the short-lived general strike. In the reaction which followed this false move the Trade Disputes and Trade Unions Act, 1927, was passed.

This Act, in an attempt to prevent a recurrence of a general strike made certain strikes and lock-outs illegal, revised the law as to picketing, limiting both the places at which it was allowable and the permissible action of the pickets and defined the term "intimidation". It struck at the finances of the Unions by basing contributions to the Political Fund on the signature by a member of a notice expressing his willingness to contribute to the Fund. From the first the Labour Party bitterly opposed its passage. Feeling on both sides ran high and the spirit of compromise was absent. When the Labour Party came into power in 1945 it at once used its power to undo what had been done. The Trade Disputes and Trade Unions Act, 1946, is a single clause Act repealing *in toto* the 1927 Act.

In an early chapter of this book emphasis was laid on the individual character of the contract between the employer and the workman, and it was pointed out that the terms of a collective bargain were only binding on a particular employer and a particular workman if there was evidence that they had agreed to make the terms of the collective bargain the basis of their individual bargain. So careful has English law been to maintain this attitude that the reader will have no difficulty in finding instances of legislation which imposes certain safeguards as to wages and then proceeds to say that the provision is to operate as a term in the contract between an employer and his workers, so as to make it clear that the individual bargain must not be in contravention of the enactment. This is in marked contrast to the position of collective bargains in certain countries in Europe. There has, however, been a large amount of indirect recognition of collective bargains. The author and Dr. W. A. Robson in a joint article in the *Economic Review* for March, 1938, collected a considerable number of these instances, such for instance as the provision in unemployment insurance that a claimant was not to be disqualified for refusing suitable employment if the work offered was in a district away

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from his home and the wage offered was below that fixed by a collective bargain covering such work in that district (see p. 258). Since that article was written the Road Haulage Wages Act, 1938, would furnish another good example (see p. 74). The one instance in which English legislation has gone further than indirect support is a War Emergency Measure known as the Conditions of Employment and National Arbitration Order, 1940 (S.R. and O., 1940, No. 105). This order remains in operation during the emergency period which exists from 1st September, 1939, to such day as His Majesty may by Order in Council declare to be the date on which the emergency came to an end. It remains to be seen whether its provisions, or any of them, are put on a permanent basis. A summary of this order is given in the next chapter. But even in this instance the recognition of the collective bargain is not unqualified. It is true that Part III requires the observance by all employees of terms and conditions not less favourable than "recognized terms and conditions" which are defined as "terms and conditions of employment which have been settled by machinery of negotiation or arbitration to which the parties are organizations of employers and Trade Unions". But this does not mean that a workman has the right at any time to sue his employer in a Court of Law for the non-observance of these recognized terms and conditions. Before he can do this a somewhat elaborate procedure must be followed. The alleged failure to observe recognized terms and conditions in a particular case must be reported to the Minister by a Trade Union, and then the usual procedure laid down in Part I for the settlement of disputes must be followed. The ultimate award of the tribunal becomes an implied term of the contract between the employer and the workman. But it is only after the award has been made by the Tribunal that the workman has a contractual right to recover the wages fixed.¹

¹ *Holland v. Sanders and Son*, 1945, K.B. 75.

CHAPTER II

CONCILIATION

In the last chapter consideration has been given to combinations of masters and workmen, their use as means of arriving at collective bargains, and the strikes and lock-outs which at times result from failure to reach agreement. All this presupposes that these combinations can be left to go their way, agree or disagree as the case may be, without the community being concerned in the matter, or having any power to step in and bring about a settlement. It will be generally admitted that the community is, in fact, a sufferer whenever there is a strike or lock-out, and the theory of the general strike is that the community must be driven by suffering to intervene in favour of the strikers, if they cannot get what they demand from the employers. A possible means of limiting the communal loss arising from trade disputes is a system of compulsory arbitration, but until the enactment of the Conditions of Employment and National Arbitration Order, 1940, which was an emergency war provision, such a measure obtained very little, if any, support in this country, except in so far as minimum wage legislation can be regarded as an equivalent. A middle course has been steered and provision has been made for third parties or government officials or institutions to be called in either as conciliators, or as arbitrators voluntarily accepted by both parties to the dispute, or even as inquirers. There are two general Acts in force for facilitating the peaceful settlement of disputes, and recent Transport legislation has contained special provisions on this subject. The two general Acts are the Conciliation Act, 1896, and the Industrial Courts Act, 1919.

The Conditions of Employment and National Arbitration Order, 1940, is of sufficient interest, even if none of its provisions are permanently retained, for a summary of it to be included in this chapter.

The Conciliation Act, 1896, is "an Act to make better provision for the prevention and settlement of trade disputes" and its administration is in the hands of the Ministry of Labour. The main provision is as follows: Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or

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between different classes of workmen, the Minister may, if he thinks fit, exercise all or any of the following powers, viz. :—

- (a) Inquire into the causes and circumstances of the difference ;
- (b) Take such steps as to him may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon, or nominated by the Minister or by some other person or body, with a view to the amicable settlement of the difference ;
- (c) On the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade, and the circumstances of the case, appoint a person or persons to act as conciliator or as a Board of Conciliation ;
- (d) On the application of both parties to the difference, appoint an arbitrator.

If any person is appointed to act as conciliator he is to inquire into the causes and circumstances of the difference by communication with the parties, and otherwise is to endeavour to bring about a settlement of the difference, and is to report his proceedings to the Minister. If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms is to be drawn up and signed by the parties or their representatives, and a copy is to be delivered to and kept by the Minister.

The rest of the Act is concerned with such matters as (a) the Registration of Conciliation Boards, and the furnishing by them to the Minister of such returns and reports of their proceedings as the Minister may reasonably require ; and (b) where adequate means do not exist for having disputes submitted to a Conciliation Board, the taking of steps by the Minister for establishing such Boards.

The Industrial Courts Act, 1919, is in two parts, the first setting up a standing Industrial Court, and the second providing for Courts of Inquiry.

The standing Industrial Court consists of persons appointed by the Minister of Labour, of whom some are independent persons, some represent employers, some represent workmen. Provision is made for the inclusion of women. One independent person is to be President of the Court, and he has to direct who are to constitute the Court for the hearing of any particular matter. Any trade dispute, whether existing or apprehended, may be reported to the Minister by either of the parties to the dispute, and the Minister must take the matter into consideration, and take such steps as seem to him expedient for promoting a settlement.

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With the consent of both parties to a dispute, a definite settlement can be arrived at through the power given to the Minister to refer the matter with such consent (1) to the Industrial Court, or (2) to arbitration by one or more persons, or (3) to a Board of Arbitration having equal representation of employers and workmen and an independent chairman.

If the Minister cannot get the consent of both parties for such a reference, it is still open to him to refer the matter to the Industrial Court for advice. If the trade in which a dispute arises has its own arrangements for conciliation or arbitration, then these must be resorted to first, and the Minister will only act under these powers when the trade arrangements have failed to achieve a settlement.

The machinery of these two Acts is in constant use. The *Ministry of Labour Gazette* in its monthly issues gives particulars of what has been done under the joint operation of the Conciliation Act, 1896, and the Industrial Courts Act, 1919. For instance, in the *Labour Gazette* for June, 1935, there are recorded three decisions of the Industrial Court, and one other settlement of a dispute. The *Labour Gazette* for March, 1935, records three disputes, in one of which an arbitrator was appointed under the Industrial Courts Act, 1919, and in the other two cases a neutral chairman was appointed under the Conciliation Act, 1896, to act with Boards of Conciliation which had failed to reach agreement.

Part II of the Industrial Courts Act is not aimed directly at achieving a settlement, but rather at giving an authoritative statement to Parliament about a dispute which either exists or is apprehended, and thus informing public opinion, but even under part of the Act a settlement may be reached, as, for instance, in the case given below. Under this part of the Act if a trade dispute exists or is apprehended the Minister may inquire into the causes and circumstances of the dispute, and, if he thinks fit, may refer any matters relevant thereto to a Court of Inquiry appointed by him, and the Court must either in public or private inquire into the matters referred to them. The Court can call for documents and summon witnesses under Rules made by the Minister. The Report of a Court of Inquiry must be laid without delay before both Houses of Parliament and then it is published as a command paper. A typical example of the operation of this part of the Act is concerned with the Hull Fishing Industry. A dispute began in the industry on 1st April, 1935. On 15th April the Minister set up a Court of Inquiry into the causes and circumstances of the stoppage of work. The Court reported as to the proximate cause of the dispute, and also as to the absence of any adequate joint

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machinery for settling disputes, with the result that the members of the Court were able, acting in the capacity of mediators, to assist the parties to reach an agreement providing for the resumption of work and for the setting up of a Joint Conciliation Board.

In recent Acts of Parliament dealing with the transport industry, specific directions as to the settlement of disputes have been inserted. Section 93 of the Road Traffic Act, 1930, gives the Transport Trade Unions the right to make representations to the Traffic Commissioners that existing wages or conditions of service of persons operating public service vehicles carrying passengers are not in accordance with the first paragraph of the section, and in default of a satisfactory settlement by the Commissioners, the Minister of Labour may refer the dispute to the Industrial Court for settlement.

The Road and Rail Traffic Act, 1933, by section 32 amended and extended section 93 of the Road Traffic Act, 1930. By the first subsection it is enacted that where any matter is referred to the Industrial Court under section 93 of the Act of 1930, the Court in arriving at its decisions shall have regard to any determination which may be brought to its notice relating to the wages or conditions of service of persons employed in a capacity similar to that of the persons to whom the reference relates, and contained in a decision of a Joint Industrial Conciliation Board, or other similar body, or in an agreement between organizations representative of employers and workpeople. By the second subsection, section 93 of the Act of 1930 is to apply not merely to persons operating public service vehicles carrying passengers but also to persons employed as drivers or statutory attendants of authorized vehicles by the holder of an A licence (public carrier's licence) or of a B licence (limited carrier's licence), with the variation that the licensing authority takes the place of the Commissioners.

On p. 142 the provisions of section 33 of the same Act are set out. These include a reference to the Industrial Court for advice.

On pp. 73-5 *supra* will be found the provisions of the Road Haulage Wages Act, 1938, with regard to the settlement by the Industrial Court of the proper wage for a person operating a vehicle for which the user has a C licence (private carrier's licence).

Under section 67 of the London Passenger Transport Act, 1933, disputes as to wages and conditions between the Transport Board and the three Trade Unions concerned are to go to a negotiating Committee, with further reference, if necessary, to a Wages Board. This Wages Board has an elaborate composition in order that

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outside interests may have some representation. It consists of an independent chairman nominated by the Minister of Labour, six representatives of the Transport Board, six representatives of the three Trade Unions concerned (two apiece), and four other persons, one each nominated by the Trade Union Congress, the Co-operative Union, the Association of Chambers of Commerce, and the National Confederation of Employers' Organizations.

The following is a summary of the Conditions of Employment and National Arbitration Tribunal Order, 1940. Under Part I a National Arbitration Tribunal is set up. It has five members, of whom three are appointed members. The other two represent employers and workers respectively. When a dispute has arisen either party may report it to the Minister of Labour. If there is collective joint machinery suitable for settling the dispute the Minister must refer it to such machinery. If there is failure to reach a settlement or undue delay in the proceedings, the Minister may refer the matter to the National Arbitration Tribunal for settlement. An unsettled dispute must be referred to the Tribunal within twenty-one days from the date on which the Minister received a report of it, unless there are special circumstances which make it necessary or desirable to postpone such a reference. Any agreement, decision, or award arrived at by this procedure is binding upon the parties and the terms of the settlement become an implied term of the contract between an employer and a workman to whom the agreement, decision, or award relates.

Under Part II lock-outs and strikes are prohibited unless disputes have been reported to the Minister and have not been referred by the Minister for settlement within twenty-one days of his receipt of the report. Under Part III all employers must observe terms and conditions of employment not less favourable than "recognized terms and conditions". These are defined as terms and conditions of employment which have been settled by machinery of negotiation or arbitration to which the parties are organizations of employers and Trade Unions. Such bodies must be representative of substantial proportions of employers and workers engaged in the trade or industry in the district concerned. These terms and conditions include those arrived at by collective bargaining between employers' associations and Trade Unions by the decisions of Joint Industrial Councils and similar joint bodies, and by arbitration awards.

Questions which concern the terms and conditions to be observed in a particular case may be reported to the Minister and the procedure for the result of a settlement is the same as in Part I. Such questions can only be raised by an organization of employers

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or a Trade Union which habitually takes part in the settlement of wages and working conditions in the trade concerned.

Part IV deals with departures from trade practices allowed during the war and is intended to facilitate the restoration of such practices when the war is officially over.

APPENDIX A

CONTRIBUTION CONDITIONS UNDER THE NATIONAL INSURANCE ACT, 1946

Unemployment and Sickness Benefit

1. The contribution conditions for unemployment benefit or for sickness benefit are that—

- (a) not less than twenty-six contributions of the appropriate class have been paid by the claimant in respect of the period between his entry into insurance and the day for which the benefit is claimed ; and
- (b) not less than fifty contributions of the appropriate class or their equivalent have been paid by or credited to him in respect of the last complete contribution year before the beginning of the benefit year which includes the day for which the benefit is claimed.

Maternity Grant and Attendance Allowance

2. (1) The contribution conditions for a maternity grant or an attendance allowance are :—

- (a) that not less than twenty-six contributions of the appropriate class have been paid by the relevant person in respect of the period beginning with that person's entry into insurance and ending immediately before the relevant time ; and
- (b) that not less than twenty-six such contributions have been paid by or credited to that person in respect of the last complete contribution year before the relevant time.

(2) In this paragraph :—

- (a) the expression " relevant person " means the person by whom the conditions are to be satisfied ;
- (b) the expression " relevant time " means the date of the confinement, or, where the relevant person is the husband and he was dead or over pensionable age on that date, the date of his attaining pensionable age or dying under that age.

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Maternity Allowance

3. The contribution conditions for a maternity allowance are that :—

- (a) not less than forty-five contributions of the appropriate class have been paid by or credited to the claimant in respect of the fifty-two weeks immediately preceding the period for which the allowance is payable ; and
- (b) of those contributions not less than twenty-six are either contributions actually paid or contributions credited by virtue of the section contained in Part IV of this Act relating to married women.

Widow's Benefit and Retirement Pension

4. (1) The contribution conditions for widow's benefit or a retirement pension are that :—

- (a) not less than one hundred and fifty-six contributions of the appropriate class have been paid by the relevant person in respect of the period between that person's entry into insurance and the relevant time ; and
- (b) the yearly average of the contributions paid by or credited to that person (ascertained as at the relevant time) is not less than fifty.

(2) In this paragraph :—

- (a) the expression " relevant person " means the person by whom the conditions are to be satisfied ;
- (b) the expression " relevant time " means the date of the relevant person attaining pensionable age or dying under that age.

Death Grant

5. (1) The contribution conditions for death grant are that :—

- (a) not less than twenty-six contributions of the appropriate class have been paid by the relevant person in respect of the period between that person's entry into insurance and the relevant time ; and

(b) either :—

(i) not less than forty-five such contributions have been paid by or credited to that person in respect of the last complete contribution year before the relevant time ; or

(ii) the yearly average of the contributions paid by or credited to that person (ascertained as at the relevant time) is not less than forty-five.

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(2) In this paragraph :—

- (a) the expression "relevant person" means the person by whom the conditions are to be satisfied ;
- (b) the expression "relevant time" means the date of the deceased's death or, where immediately before that date, the relevant person was dead or over pensionable age, the date of that person attaining pensionable age or dying under that age.

APPENDIX B

FAIR WAGES CLAUSE IN GOVERNMENT CONTRACTS

The new Resolution, which was submitted to the House of Commons by the Minister of Labour and National Service on 14th October, 1946, and received approval, is as follows :—

“ That, in the opinion of this House, the Fair Wages Clauses in Government Contracts should be so amended as to provide as follows :—

“ 1. (a) The contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out by machinery of negotiation or arbitration to which the parties are organizations of employers and Trade Unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district.

“ (b) In the absence of any rates of wages, hours, or conditions of labour so established the contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours, and conditions observed by other employers whose general circumstances in the trade or industry in which the contractor is engaged are similar.

“ 2. The contractor shall in respect of all persons employed by him (whether in execution of the contract or otherwise) in every factory, workshop, or place occupied or used by him for the execution of the contract comply with the general conditions required by this Resolution. Before a contractor is placed upon a Department's list of firms to be invited to tender, the Department shall obtain from him an assurance that to the best of his knowledge and belief he has complied with the general conditions required by this Resolution for at least the previous three months.

“ 3. In the event of any question arising as to whether the requirements of this Resolution are being observed, the question shall, if not otherwise disposed of, be referred by the Minister of Labour and National Service to an independent tribunal for decision.

“ 4. The contractor shall recognize the freedom of his work-people to be members of Trade Unions.

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" 5. The contractor shall at all times during the continuance of a contract display, for the information of his workpeople, in every factory, workshop, or place occupied or used by him for the execution of the contract, a copy of this Resolution.

" 6. The contractor shall be responsible for the observance of this Resolution by sub-contractors employed in the execution of the contract, and shall if required, notify the Department of the names and addresses of all such sub-contractors."

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ABBREVIATIONS—In text S R
& O = Statutory Rules and Orders

In Index CM = Coal Mines,
FA = Factory Act, II =
Industrial Injuries, NHI =
National Health Insurance, NI
= National Insurance, TA =
Truck Acts, TB = Trade
Boards, TU = Trade Union,
UI = Unemployment Insurance

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